



Department for  
Communities and  
Local Government

# The role of planning in preventing major- accident hazards involving hazardous substances

Technical consultation

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# Contents

	Page
Introduction	iv
Background to the new Seveso III directive	1
Delivering Seveso III objectives through land-use planning policies	4
Planning controls on hazardous substances	5
Protecting areas around hazardous establishments	11
Public participation and access to justice	13
Scope for further reform	15
Annex A: Draft Planning (Hazardous Substances) Regulations 2015	18
Annex B: Glossary of terms	67

# Introduction

1. A number of accidents across Europe involving hazardous substances, notably at Seveso in Italy, prompted EU legislation to prevent major accidents. This European legislation has been in place since 1992, and when updated in 1996 ('Seveso II') added expectations on land-use planning. The most recent update ('Seveso III') was agreed in 2012 and has to be transposed<sup>1</sup> by 31 May 2015.
2. Domestic planning legislation to safeguard against accidents involving hazardous substances in England predates the planning requirements of the Seveso II directive and has been amended to reflect European requirements. There have been amendments to the Planning (Hazardous Substances) Regulations 1992 and we have a Red Tape Challenge commitment to consolidate them. Alongside the regulations, Seveso II requirements are also met through local plans and development management regimes.
3. This consultation sets out how we propose, in England<sup>2</sup>, to transpose the land-use planning requirements of Seveso III, and improve the regulatory framework on planning for hazardous substances.

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<sup>1</sup> See glossary

<sup>2</sup> The devolved administrations are responsible for implementing in Scotland, Wales and Northern Ireland.

## Basic Information

<b>To:</b>	This is a public consultation and anyone with an interest in the proposals may respond.
<b>Responsibility:</b>	This consultation is being run by the Planning, Infrastructure and Environment division in the Department for Communities and Local Government.
<b>Duration:</b>	This consultation will run from 20 October 2014 and will conclude on 1 December 2014.
<b>Enquiries:</b>	<a href="mailto:sevesoconsultation@communities.gsi.gov.uk">sevesoconsultation@communities.gsi.gov.uk</a>
<b>After the Consultation:</b>	A summary of responses to each of the consultations contained within this document will be published on the Department's website within three months of the closing date.

## How to respond to this consultation

Please respond by completing the relevant online survey by 1 December 2014 at <https://www.surveymonkey.com/s/DCLG-Seveso>

Alternatively you can email your response to the questions in this consultation to [sevesoconsultation@communities.gsi.gov.uk](mailto:sevesoconsultation@communities.gsi.gov.uk)

If you need to provide a written response we have also provided a template for you to use. If you are **responding in writing please make it clear which questions you are responding to**. Written responses should be sent to:

Seveso III Consultation Team  
Planning, Infrastructure and Environment  
Department for Communities and Local Government  
Third Floor (NE) Fry Building  
2 Marsham Street  
London SW1P 4DF

When you reply it would be very useful if you confirm whether you are replying as an individual or submitting an official response on behalf of an organisation and include:

- your name,
- your position (if applicable),
- the name of organisation (if applicable),
- an address (including post-code),
- an email address, and
- a contact telephone number

## Scope

<b>Topic of this consultation:</b>	<p>Changes to:</p> <ul style="list-style-type: none"> <li>• transpose in England the land-use planning requirements of the Seveso III directive (2012/18/EU) on the control of major-accident hazards involving hazardous substances;</li> <li>• improve the regulatory framework on planning for hazardous substances.</li> </ul>
<b>Scope of this consultation:</b>	<p>We are seeking views on our proposals to transpose the requirements of the Seveso III directive. These affect the way hazardous substances consents operate, and the way in which the planning system reduces the likelihood and impact of major accidents. We are also seeking views on proposals to improve the regulatory framework on planning for hazardous substances.</p>
<b>Geographical scope:</b>	<p>These proposals relate to England only.</p>
<b>Impact assessment:</b>	<p>An impact assessment is not required because the impact on business is considered to be minimal.</p>
<b>Getting to this stage:</b>	<p>The current framework for planning for hazardous substances is contained in the Planning (Hazardous Substances) Act 1990 (as amended), the Planning (Hazardous Substances) Regulations 1992 (as amended) and other relevant planning legislation. The Planning (Hazardous Substances) Act 1990 can be viewed at <a href="http://www.legislation.gov.uk/ukpga/1990/10/contents">http://www.legislation.gov.uk/ukpga/1990/10/contents</a>, and the Planning (Hazardous Substances) Regulations 1992 can be viewed at <a href="http://www.legislation.gov.uk/uksi/1992/656/contents/made">http://www.legislation.gov.uk/uksi/1992/656/contents/made</a></p> <p>The European Union have published a new directive 2012/18/EU on the control of major-accident hazards involving hazardous substances, amending Council Directive 96/82/EC. The new directive, known as Seveso III, can be viewed at <a href="http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32012L0018">http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32012L0018</a></p> <p>The National Planning Policy Framework and planning guidance can be viewed at: <a href="http://planningguidance.planningportal.gov.uk/">http://planningguidance.planningportal.gov.uk/</a>.</p>
<b>Previous engagement:</b>	<p>The reforms have been informed by informal engagement with businesses and representative bodies in the chemicals industry, representatives of local government, and regulatory bodies (Health and Safety Executive, Environment Agency and Natural England).</p>

# Background to the new Seveso III directive

- 1.1 The Seveso III directive (2012/18/EU) became European law in August 2012. The stated intention is to prevent on-shore major accidents involving hazardous substances and limit the consequences to people and/or the environment. At present, the Seveso II directive applies to around 700 sites in England<sup>3</sup>, mainly establishments related to petrochemical and chemical industries, large scale fuel, gas and chemical storage and distribution depots, and some pharmaceutical and metal manufacturing sites.
- 1.2 Seveso III has to be transposed into domestic legislation by 31 May 2015. The Health and Safety Executive lead on transposing the bulk of the directive's requirements across Great Britain. The Executive consulted on new control of major accident hazards regulations<sup>4</sup> in May and June 2014. The Department for Communities and Local Government have responsibility for transposing the land use planning requirements of the directive in England. Scotland, Wales and Northern Ireland have separate responsibility for transposing the land-use planning requirements in their areas.

## Main changes from Seveso II

- 1.3 Seveso III makes a number of changes relating to land-use planning, in particular:

Scope – the directive changes the list of hazardous substances it controls. The new list reflects internationally recognised standards set out in separate EU legislation on classification, labelling and packaging<sup>5</sup>. These changes were supported by industry and bring trade benefits through improved integration;

Public consultation about decisions – the directive now includes specific requirements on public consultation relating to decisions on where hazardous substances are to be located and on development around those locations. These are intended to bring the directive in line with the provisions of the Aarhus Convention.

## Our approach to implementing European directives and Seveso III

- 1.4 We already have a robust system in place for preventing major accident hazards through land-use planning, and therefore propose to transpose the land-use planning requirements of Seveso III using the existing hazardous substances

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<sup>3</sup> See Annex 2, Table 2 of the Health and Safety Executive's consultation at <http://www.hse.gov.uk/consult/condocs/cd266.htm>

<sup>4</sup> See <http://www.hse.gov.uk/consult/condocs/cd266.htm>

<sup>5</sup> Regulation 1272/2008(EC) on classification, labelling and packaging of substances and mixtures. See [http://ec.europa.eu/enterprise/sectors/chemicals/documents/classification/index\\_en.htm](http://ec.europa.eu/enterprise/sectors/chemicals/documents/classification/index_en.htm)

consent regime and the wider planning system<sup>6</sup> where relevant. We need to transpose a limited number of new requirements in the directive, but as several existing requirements are now expressed differently in Seveso III we will also have to make further changes to the domestic regulatory framework. In doing so we are taking the opportunity to streamline current processes where consistent with the directive and industry practice.

- 1.5 A key government objective in implementing EU directives is to minimise burdens on UK business and ensure they are not put at a disadvantage relative to their European competitors<sup>7</sup>. In a few areas, existing domestic legislation is more onerous than the requirements of Seveso III. In particular, the substances controlled through the hazardous substances consent regime have not been overhauled since 1992 and are out of step with the new directive. In line with our commitment to avoid 'gold-plating' of EU directives<sup>8</sup> we are therefore proposing changes in a number of areas where domestic controls exceed the directive's requirements and changes can be made without affecting safety.
- 1.6 We also made a Red Tape Challenge<sup>9</sup> commitment to consolidate the existing hazardous substances regulations as part of the transposition of Seveso III. Our aim is to provide a single, coherent set of regulations regarding hazardous substances consent.
- 1.7 Our proposals are set out in this document in the following five sections.
  - Delivering Seveso III objectives through land-use planning policies
  - Planning controls on hazardous substances
  - Protecting areas around hazardous establishments
  - Public participation and access to justice
  - Scope for further reform
- 1.8 Draft regulations are provided at Annex A and a glossary of terms is included at Annex B. The reason for including the draft regulations in this consultation document is to provide a sense of what the new regulations may look like so as to assist in responding to this consultation. It also provides the opportunity for comment on whether the regulations are well structured and clear. The regulations will be subject to change in response to this consultation and for technical reasons.
- 1.9 Consultation questions appear in each section. To help our analysis we would prefer consultation responses via <https://www.surveymonkey.com/s/DCLG-Seveso>.

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<sup>6</sup> See glossary

<sup>7</sup> See Transposition Guidance for EU Legislation, paragraph 1.3 at <https://www.gov.uk/government/publications/implementing-eu-directives-into-uk-law>

<sup>8</sup> See Transposition Guidance for EU Legislation, paragraph 2.10 at <https://www.gov.uk/government/publications/implementing-eu-directives-into-uk-law>

<sup>9</sup> See <http://www.redtapechallenge.cabinetoffice.gov.uk/themehome/planning-administration/>

1.10 The new regulations will be accompanied by revised guidance which will be available on the planning guidance website<sup>10</sup>. Our aim is to publish this guidance before the regulations come into force, so as to help the sector understand what is required.

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<sup>10</sup> [www.planningguidance.planningportal.gov.uk](http://www.planningguidance.planningportal.gov.uk)

# Delivering Seveso III objectives through land-use planning policies

- 2.1 The Seveso III directive, Article 13(1), requires the objectives of preventing major accidents and limiting the consequences of such accidents to be taken into account in planning and other relevant policies. The directive also requires controls to deliver those objectives. Article 13(2) sets out additional matters that need to be taken into account, including separating hazardous establishments and other land uses. Seveso II (Article 12) included similar requirements, which are reflected in the current regulations.
- 2.2 We propose to transpose Seveso III in the same way<sup>11</sup>, however, in addition to updating the objectives, we will expressly apply<sup>12</sup> the updated regulations to policy issued by the Secretary of State (such as the National Planning Policy Framework) and national policy statements under the major infrastructure planning regime.
- 2.3 The controls and procedures the directive requires in order to implement the objectives it sets out are considered in Sections 3 and 4 of this consultation.

## Question 1

Do you agree with the proposed approach to deliver Seveso III objectives through land-use planning policies?

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<sup>11</sup> See Schedule 4, draft regulations at Annex A

<sup>12</sup> See regulation 24, draft regulations at Annex A

# Planning controls on hazardous substances

## Controls on the siting of new hazardous establishments

- 3.1 Seveso III, Article 13(1)(a), requires controls on the siting of new hazardous establishments<sup>13</sup>. Seveso II contained a similar obligation, but there are a number of changes that need to be transposed.
- 3.2 Existing controls on the siting of new hazardous establishments are delivered primarily by the hazardous substances consent regime. Operators are required to apply for consent for the presence of hazardous substances on their site, when they would be present above certain quantities. The hazardous substances authority (usually the local planning authority)<sup>14</sup> will consider the suitability of the location, consulting the Health and Safety Executive, Environment Agency and, where appropriate, Natural England. The controls are also delivered by the development management regime when planning permission for new establishments is sought.

## Aligning controlled hazardous substances with European standards

- 3.3 Seveso III, Annex I, lists both named and generic categories of hazardous substances and sets quantities at or above which a hazardous substance should be controlled. One of the main changes introduced by Seveso III is an updated list of these controlled substances. The new list is intended to reflect international standards<sup>15</sup>.
- 3.4 For a limited number of substances, our current domestic regulations have stricter controls than the requirements in either Seveso II or Seveso III. In contrast with Seveso III, domestic regulations name a number of substances specifically (they would fall within generic categories under the directive), and we control some substances at lower quantities than required by the directive. Requiring operators to obtain consent when not required by the directive adds to their costs. Aligning our domestic land-use planning controls with the directive's requirements would also bring benefits and lower costs for business because it increases consistency with the control of major accident hazards regime<sup>16</sup> and the European standards they work to.
- 3.5 In developing our proposals we have considered whether the additional domestic regulation we have inherited is justified in terms of public safety. Subject to the limited exceptions below, and on the advice of the Health and Safety Executive, we consider that aligning the planning controls with those in the directive, and

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<sup>13</sup> See glossary

<sup>14</sup> See glossary

<sup>15</sup> The 'Globally Harmonised System' as implemented by European Regulation (EC) No. 1272.2008 on classification, labelling and packaging of substances and mixtures

<sup>16</sup> The control of major accident hazards regulations, known as COMAH – see glossary

reflected in the control of major accident hazards regime, would not have any significant implications for public safety.

- 3.6 We do however consider, again on the basis of advice from the Health and Safety Executive, that, for now, retaining the existing levels of control in the hazardous substances consent regime for liquefied petroleum gas (LPG), natural gas and hydrogen are justified in terms of public safety. In light of the developing UK fuel market for these substances, the Health and Safety Executive's advice is precautionary and reflects the reduction in risk relating to where these substances are held if the proposed location is controlled. We would particularly appreciate views on the intention to maintain existing controls for these three substances. The draft regulations<sup>17</sup> set out a list of the controlled hazardous substances.

#### Question 2

- (a) Do you agree with the principle of aligning the list of controlled hazardous substances which require hazardous substances consent with the Seveso III directive? (Yes / No)
- (b) Do you have any comments on the proposed approach to controlling liquefied petroleum gas (LPG), natural gas and hydrogen?

- 3.7 We are also aware of particular concerns about the classification of flammable aerosols. The Health and Safety Executive have advised that the directive is not intended to classify aerosols containing liquefied petroleum gas (LPG) under the named substance entry of LPG (in Part 2 of the Schedule) – these would instead be classified as P3a Flammable aerosols. The Health and Safety Executive are working with industry to clarify the approach to be taken with a view to reflecting this in guidance.

- 3.8 The existing regulations also set out how substances that could be generated by the loss of control of an industrial chemical process should be controlled. Because of a change introduced by Seveso III we propose these controls will apply where it is reasonable to foresee that a hazardous substance may be generated during loss of control of a process<sup>18</sup>. The Health and Safety Executive will prepare further guidance on when it is reasonable to foresee that a hazardous substance may be generated.

### Changes to exemptions

- 3.9 Seveso III, Article 2, provides a number of exemptions to the directive which can be applied. We are proposing to apply these in full by amending the exemptions for when hazardous substances consent will be required<sup>19</sup>. This maximises the flexibility allowed by the directive and provides a better alignment with the draft control of major accident hazard regulations.

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<sup>17</sup> Schedule 1, draft regulations at Annex A

<sup>18</sup> See Schedule 1, Part 3, draft regulations at Annex A

<sup>19</sup> See regulation 4, draft regulations at Annex A.

## Establishments changing tier

- 3.10 Seveso III categorises establishments as upper or lower tier establishments based on the quantity of substances present. This categorisation affects the way establishments are managed under the control of major accident hazards regime. Seveso III requires land-use planning controls on tier changes as a result of modifications to installations or activities affecting inventories, but there is no difference in the land-use planning requirements to be applied to upper and lower tier establishments.
- 3.11 Although the hazardous substances consents regime does not currently make any distinction between upper and lower tier establishments, we believe it already delivers the objectives of Seveso III in an effective way and additional regulation relating to movement between tiers should not be necessary. This is because, for example:
- i. hazardous substances consent sets the maximum amount of substances that can be present at an establishment and it is this maximum amount that underpins the consultation distances<sup>20</sup>, notified by the Health and Safety Executive. These consultation distances and the allied controls ensure the directive's objective for long-term separation of establishments and other land-uses is delivered;
  - ii. the assessment of an application for hazardous substances consent will consider the implications for land use up to the maximum amount of substances applied for and in doing so assume that within these parameters the inventory will not be static (as establishments respond flexibly to business needs);
  - iii. where an establishment wants to update the consented amount of a substance that can be present (i.e. change the terms of their consent) a new consent will be required, including where the change would be to hold a smaller amount of substances and move the establishment from upper to lower tier.

## Businesses coming into scope of the directive for the first time

- 3.12 Because of changes to the list of hazardous substances controlled by the directive, we expect that a small number of establishments<sup>21</sup> will come into its scope for the first time. The Seveso III definitions (Article 3) categorise these establishments as either an 'other establishment'<sup>22</sup> (if the establishment is already operational and simply comes into scope on or after 1 June 2015) or as a 'new establishment' (if it is constructed or comes into operation or is the

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<sup>20</sup> See glossary

<sup>21</sup> Health and Safety Executive estimates are that between 5 and 17 sites across Great Britain will come into scope of the directive (estimates for England only are not available) – see Annex 2, Table 2 of the Health and Safety Executive's consultation at <http://www.hse.gov.uk/consult/condocs/cd266.htm>

<sup>22</sup> See Seveso III, Article 3(7) of which defines other establishments as those falling within the scope of the directive on or after 1 June 2015 which are not constructed or entering operation after this date, or falling in scope as a result of modifications.

subject of certain modifications on or after 1 June 2015). The directive requires controls on ‘new establishments’.

- 3.13 We will apply the existing approach for requiring hazardous substances consent to ‘new establishments’. Establishments operating lawfully and which simply come into scope on 1 June 2015 (the directive’s ‘other establishments’), will not be required to apply for a consent<sup>23</sup>.

### **Establishments with an existing consent**

- 3.14 Seveso III does not require establishments which already have consent to apply for a new consent simply because, for example, there have been changes to the way a hazardous substance is classified in the directive. We propose to make this clear in the new regulations, setting out the circumstances in which operators with an existing consent can continue to operate in the same way without needing to apply for a new consent<sup>24</sup>. To avoid any ambiguity, we will also make it clear that operators with an existing consent, where there has been no change to the way the directive requires the consented substances to be controlled, can continue to operate in the same way using their existing consent.

## **Controls on modifications to establishments**

- 3.15 Seveso III, Article 13(1)(b), requires controls on modifications to establishments. Modifications are defined in Article 11 of the directive as changes between tiers (see paragraphs 3.10-3.11) and modifications which “could have significant consequences for major accident hazards”. Modifications are currently controlled by requiring a new hazardous substances consent (and, where appropriate, planning permission). The effect of our domestic regime is that any change to a consent (and not just those with significant consequences) will require an application and new consent for any modification and are therefore more onerous than strictly required by the directive.
- 3.16 We therefore propose to align the new regulations with Seveso III and only require an operator to apply for a new consent when a modification to an existing consent could have significant consequences for major accident hazards (or involve a tier change). Operators would not have to apply for consent to make modifications to the consented amount and type of hazardous substances stored, if the modification would not have significant consequences for major accident hazards and would not result in a change of tier of the establishment.
- 3.17 Operators will be expected to confirm with the control of major accident hazards competent authority that the proposed modification would not have significant consequences for major-accident hazards<sup>25</sup>. The test would be that there would be no extension of the consultation zones associated with the existing hazardous

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<sup>23</sup> See regulation 28, draft regulations at Annex A

<sup>24</sup> See regulation 30, draft regulations at Annex A

<sup>25</sup> See regulation 4(14), draft regulations at Annex A

substances consent. Operators would also be expected to inform the hazardous substances authority of their proposed modifications. Further details on how operators obtain confirmation from the control of major accident hazards competent authority, and the kind of minor modifications for which this process is likely to apply, will be set out in guidance.

## Changes on how to apply for consent

- 3.18 Seveso III, Article 6(3), requires competent authorities to accept equivalent information from operators submitted to meet a requirement set out in other EU legislation. To deliver this we propose to make amendments to how operators make an application for hazardous substances consent.
- 3.19 We propose to replace the prescribed form for making an application for consent with a short list of the essential information required<sup>26</sup>, and make clear that applicants can refer to information provided for other purposes, provided the information was provided for purposes consistent with the directive.
- 3.20 At present, applications can be delayed because insufficient information is available to the Health and Safety Executive and Environment Agency to advise on granting consent. This can be because it is not clear to applicants or hazardous substances authorities what information will be required. We will therefore set out in planning guidance further advice on what information is needed for the most common types of application. We will also encourage operators to apply using the electronic 'smart form' being developed by the Health and Safety Executive and industry representatives. The form design will ensure essential information is not accidentally omitted when making an application for consent. Alongside these reforms, the Health and Safety Executive and Environment Agency will offer a pre-application advice service for operators.

## Taking additional technical measures into account

- 3.21 Seveso III, Article 13(2)(c), includes a requirement to take into account the need for additional technical measures so as not to increase the risks to human health and the environment. The Seveso II requirement on technical measures focussed on not increasing the 'risk to persons'.
- 3.22 Technical measures are currently applied in a number of ways, in particular through conditions on a hazardous substances consent. Examples may include limiting the size of a storage vessel, or fitting additional technical infrastructure to reduce the risk of an accident occurring. At present the Health and Safety Executive can require conditions on a consent about how substances are kept or used. The Environment Agency can also advise hazardous substances authorities on the need for conditions to be attached to a consent. We are therefore not proposing any regulatory change to transpose the new

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<sup>26</sup> See regulation 5, draft regulations at Annex A

requirements for technical measures relating to the environment as we consider that we already comply with the new requirements of the directive.

Question 3

- (a) Do you agree with how we propose to implement controls on new establishments? (Yes / No)
- (b) Do you agree with our proposed amendments for modifications to establishments?
- (c) Do you agree with our proposals relating to how an application for consent is made?
- (d) Do you agree with how we propose to address obligations on additional technical measures in relation to the environment?

# Protecting areas around hazardous establishments

## Controlling development in the vicinity of establishments

- 4.1 Seveso III, Article 13(1)(c), requires controls on certain new developments in the vicinity of establishments which hold controlled amounts of hazardous substances. Seveso II contained a similar obligation, which has been implemented through controls on the location of development (primarily through the development management and the major infrastructure planning regimes<sup>27</sup>).
- 4.2 We propose to retain the existing approach, but because of the way the controls are described in Seveso III we will need to expand the consultation arrangements to include ‘developments that may be the source of a major accident’.
- 4.3 Additionally, because there will be a small number of existing establishments coming into the directive’s scope for the first time as ‘other establishments’<sup>28</sup>, we will need a mechanism to draw them to the attention of the planning system. Otherwise there is a risk that the presence of the establishment will not be taken into account when considering proposals for development in the vicinity until they are notified under control of major accident hazard regulations. Our aim, if possible, is to avoid specific requirements in regulation relating to this interim period and therefore we have not included specific provision in the draft regulations. We would welcome views on appropriate mechanisms, but, in any event, we will, through planning guidance, encourage operators of these establishments to advise local planning authorities that they have come within scope. We will also work with the industry and the Health and Safety Executive to reach these establishments, bearing in mind that it is in their interest to make themselves known to the local planning authority so as to avoid the encroachment of incompatible development.

## Protecting areas of natural sensitivity

- 4.4 Seveso III, Article 13(2)(b), requires member states to take account of the need, in the long term, to protect areas of particular natural sensitivity or interest in the vicinity of establishments. The requirement in Seveso II relating to areas of natural sensitivity was to maintain appropriate distances when considering new establishments.
- 4.5 Although there has been this change in how the requirement is described we believe the current arrangements are adequate. Existing domestic legislation, which includes requirements for consultation with Natural England where an area

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<sup>27</sup> See glossary definition of Consultation Distances

<sup>28</sup> See paragraphs 3.12-3.13.

of particular natural sensitivity or interest may be affected allow areas of natural sensitivity and their level of protection to be identified and handled appropriately in planning decisions.

Question 4

Do you have any comments on the proposals for controlling development around establishments, and the use of current arrangements to deliver protection to areas of natural sensitivity?

# Public participation and access to justice

## Public participation on decisions relating to hazardous establishments and nearby developments

- 5.1 Seveso III, Article 15, adds consultation and participation requirements which are more extensive than those in Seveso II. These new requirements are intended to bring the directive into line with the Aarhus Convention.
- 5.2 Existing domestic legislation already provides for public participation in planning decisions. In certain cases that public participation is enhanced, for example where a project is subject to the environmental impact assessment directive. In a similar way to developments requiring environmental impact assessment, Article 15 contains specific public participation requirements for projects where hazardous sites are involved or affected. For example, there are specific things the public must be informed about both before and after a decision is taken.
- 5.3 We are proposing to integrate these detailed requirements into the hazardous substances consent regime<sup>29</sup>. For other relevant planning decisions, we are proposing generic provisions ensuring that these obligations are complied with in appropriate cases<sup>30</sup>.

## Public participation on plans and programmes

- 5.4 Seveso III, (Article 15(6)), sets out public participation requirements in relation to plans and programmes in line with the strategic environmental assessment directive<sup>31</sup>. We propose a specific requirement to address this obligation<sup>32</sup> although most relevant plans and programmes will already meet these obligations because of existing requirements for strategic environmental assessment<sup>33</sup>.

## Access to justice

- 5.5 Seveso III, (Article 23(b)), requires member states to ensure the public have access to the review procedures required by the environmental impact assessment directive<sup>34</sup> for relevant projects. This is delivered through judicial review and statutory review procedures.

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<sup>29</sup> See regulations 6, 7, 10, 11(2), 20, draft regulations at Annex A

<sup>30</sup> See regulation 26, draft regulations at Annex A

<sup>31</sup> Article 2(2) of Directive 2003/35/EC

<sup>32</sup> See regulation 25, draft regulations at Annex A

<sup>33</sup> Regulation 13 of the Environmental Assessment of Plans and Programmes Regulations 2004. See <http://www.legislation.gov.uk/uksi/2004/1633/contents/made>

<sup>34</sup> Article 11 of Directive 2011/92/EU

Question 5

Do you agree with how we propose to deliver Seveso III requirements on public participation on specific individual projects and on plans and programmes?

# Scope for further reform

- 6.1 We believe there is potential to improve the way planning delivers the land-use controls relating to major accident hazards involving hazardous substances in a way that is sensitive to business needs. We have set out a number of proposals in this consultation but we also consider there is scope for further reform looking beyond the immediate need to implement Seveso III. We are therefore inviting views now to shape this future reform.

## Avoiding unnecessary restrictions on development while protecting the needs of industry

- 6.2 The area around an establishment holding a hazardous substances consent where the Health and Safety Executive consider there could be a risk from an accident forms the basis of the consultation zones within which planning applications are drawn to their attention. They advise on whether the proposed development would be appropriate or not, and concerns about safety can rule out development proposals that would otherwise be acceptable. We want to avoid any unnecessary restriction on development proposals arising from the presence of a hazardous substances consent, but protect the needs of the business benefitting from the consent.
- 6.3 We know from industry that even in situations when they are not using a consent in full, they value the flexibility having a consent in place gives them to develop business opportunities. We are not therefore considering any changes relating to consents which are not being used in full.
- 6.4 However, there are situations, where development can be prevented in areas when it would otherwise be appropriate simply because an unused consent exists nearby. The two scenarios we want to give further consideration to are:
- **Unimplemented consents:** Consents that have not been implemented;
  - **Redundant consents:** sites that are permanently closed or decommissioned, or abandoned.

### Unimplemented consents

- 6.5 We understand that a number of hazardous substances consents have never been implemented. We would like to gain evidence on the scale of unimplemented consents, and the consequences of these consents on development potential in their vicinity.
- 6.6 Depending on the scale of the concern we may wish to bring forward proposals to bring hazardous substances consents into line with the rest of the planning system, and require the consent to be implemented within a given timescale. To do so, we would need to identify a clear point at which the consent had been implemented. One option could be the point at which notification is made under the control of major accident hazards regime.

## Redundant consents

- 6.7 Redundant consents can exist when sites are decommissioned, permanently closed or abandoned. Article 7(4)(c) of Seveso III requires operators to inform the control of major accident hazards competent authority<sup>35</sup> in advance of the permanent closure of the establishment or its decommissioning. Revoking these consents would remove restrictions on development that are no longer necessary.
- 6.8 We will therefore establish an administrative link between the notification to the control of major accident hazards competent authority and hazardous substances authorities. This would mean that when the Health and Safety Executive is notified it would inform the hazardous substances authority of this so to allow for the revocation of the hazardous substances consent.
- 6.9 There are a number of related concerns that would require regulatory change. For example, questions such as whether revocation should be immediate or whether there should be a period within which the operator could contest the intended revocation.
- 6.10 Also, the fact that an establishment had been permanently closed or decommissioned may need to be reflected in the compensation arrangements relating to revocation. Where a site is abandoned, we could allow hazardous substances authorities to more easily revoke a consent without compensation. If we considered this, we would need to consider how abandonment would be verified by the hazardous substances authority. One option would be to inform the last known operator of their intention to revoke a consent.

### Question 6

- (a) Do you have any information about unimplemented hazardous substances consents, and any views on or evidence of their effects?
- (b) Do you have any views on dealing with redundant consents?

## Improving Seveso III planning controls

- 6.11 We believe that there is potential for further improvements in the longer term to better align the land-use planning controls required by the directive with those delivered by the control of major accident hazards (COMAH) regime. This could mean giving consideration to the competent authority for the regime delivering the public safety and environmental requirements of the hazardous substances consents regime. However, in shaping any future reforms a principal concern would be to retain responsibility for considering the land-use planning implications of hazardous substances establishments with the local planning authority.

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<sup>35</sup> See glossary

- 6.12 At present there are between 70-100 hazardous substances consent applications per year in England. Most local authorities handle one application a year or less. This lack of familiarisation with process and requirements can lead to delays in handling consent applications, because of the technical nature of the content. Local authorities rely heavily on advice from the Health and Safety Executive and Environment Agency in order to determine an application.
- 6.13 We believe there is scope for efficiency gains through greater separation of the technical content of consent applications, and the land-use planning considerations. As the control of major accident hazards competent authority advise the local planning authority in receipt of an application of the area around an establishment where development would be likely to be affected by an accident they are arguably best placed to receive the application in the first instance so as to carry out this technical assessment. This assessment is necessary before a local planning authority can consider the land-use implications.
- 6.14 A key concern for a local planning authority when considering an application for hazardous substances consent is the limitation on new development that could arise within the consultation zone that would be placed around an establishment if a hazardous substances consent were granted. A local planning authority can only reach a substantive conclusion on the land use implications once they know what the consultation zone would be. Therefore separating and sequencing the assessment process so as to allow the technical considerations to be handled first could both speed up the process and ensure a local planning authority has the information it requires to reach a considered view on the land use implications. This could also provide a better opportunity for local planning authorities when concerned about the wider land use implications of a hazardous substances application to consider with the applicant appropriate mitigation of the wider impact.
- 6.15 We would like to hear views on whether a better alignment between the planning controls and the control of major accident hazards regime could be appropriate and how this could be achieved.

Question 7

- (a) Do you have any views on how a better alignment between the planning controls and control of major accident hazards regime could be achieved?
- (b) What further improvements would you like to see to how planning controls are delivered, while still meeting the objectives of Seveso III?

# Annex A – Draft Regulations

STATUTORY INSTRUMENTS

**2015 No.**

## **TOWN AND COUNTRY PLANNING, ENGLAND**

### **The Planning (Hazardous Substances) (England) Regulations 2015**

*Made* - - - - \*\*\*  
*Laid before Parliament* \*\*\*  
*Coming into force* - - \*\*\*

#### **CONTENTS**

##### **PART 1**

##### **General**

1. Citation, commencement and application
2. Interpretation

##### **PART 2**

##### **Hazardous substances, controlled quantities and exemptions**

3. Hazardous substances and controlled quantities
4. Exemptions

##### **PART 3**

##### **Express consent**

5. Applications for hazardous substances consent
6. Publication of notices of applications
7. Notification of applications to owners
8. Inspection of applications
9. Receipt of applications by hazardous substances authority
10. Consultation before the grant of hazardous substances consent
11. Determination of applications for hazardous substances consent
12. Notice of reference of applications to the Secretary of State
13. Appeals

##### **PART 4**

##### **Enforcement**

14. Hazardous substances contravention notices

15. Appeals against hazardous substances contravention notices
16. Appeals: supplementary
17. Effect of hazardous substances contravention notices, etc
18. Enforcement register
19. Validity

#### PART 5

##### Consents register

20. Consents register

#### PART 6

##### Fees

21. Fees for applications
22. Fees for deemed applications

#### PART 7

##### Application of the Act to hazardous substances authorities

23. Application of the Act to hazardous substances authorities

#### PART 8

##### Policies and public consultation and participation

24. Policies
25. Plans and programmes
26. Development around establishments

#### PART 9

##### Revocations, amendments, savings, transitional provisions and review

27. Revocations
28. Transitional exemptions: contravention of hazardous substances control
29. Transitional applications and appeals
30. Interpretation of existing consents
31. Saving for deemed consent conditions
32. Other amendments
33. Review

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## SCHEDULES

### SCHEDULE 1 — HAZARDOUS SUBSTANCES AND CONTROLLED QUANTITIES

PART 1 — Categories of substances

PART 2 — Named hazardous substances

PART 3 — Substances used in an industrial chemical process

### SCHEDULE 2 — PRESCRIBED FORMS, NOTICES AND CERTIFICATES

**SCHEDULE 3 — ENFORCEMENT – MODIFICATION OF THE PRINCIPAL ACT**

**PART 1 — Appeals against hazardous substances contravention notices**

**PART 2 — Effect of hazardous substances contravention notices, etc.**

**PART 3 — Registers**

**PART 4 — Validity**

**PART 5 — Sections of the principal Act as modified**

**SCHEDULE 4 — Amendments to legislation**

The Secretary of State is a designated Minister for the purposes of section 2(2) of the European Communities Act 1972(a) (“the 1972 Act”) in relation to measures relating to the prevention and limitation of the effects of accidents involving dangerous substances(b).

The Secretary of State makes these Regulations in exercise of the powers conferred by sections 4(2), 4(4), 4(5), 5, 7, 8, 17(2), 21(2), 21(3), 21(3A), 24(4), 25, 26A, 28, 40(1), and 40(4) of the Planning (Hazardous Substances) Act 1990(c) and section 2(2) and Schedule 1A of the 1972 Act.

These Regulations make provision for a purpose mentioned in section 2(2) of the 1972 Act and it appears to the Secretary of State that it is expedient for the references in these Regulations to Regulation (EC) No 1272/2008 of the European Parliament and of the Council of 16 December 2008 on classification, labelling and packaging of substances and mixtures(d), to be construed as references to that instrument as amended from time to time.

**PART 1**

**General**

**Citation, commencement and application**

**1.** These Regulations—

- (a) may be cited as the Planning (Hazardous Substances) (England) Regulations 2015;
- (b) come into force on 1st June 2015; and
- (c) apply in relation to England only.

**Interpretation**

**2.—(1)** In these Regulations—

“the 1992 Regulations” means the Planning (Hazardous Substances) Regulations 1992(e);

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(a) 1972 c.68; section 2(2) was amended by section 27 of the Legislative and Regulatory Reform Act 2006 (c.51) and section 3 of, and Part 1 of the Schedule to, the European Union (Amendment) Act 2008 (c.7).

(b) S.I. 1998/1750.

(c) 1990 c.10. See section 39(2) for the meaning of “prescribed”. Section 4 was amended by S.I. 1999/981 to which there are other amendments not relevant to these regulations. Section 7(1) was amended by section 144 of and paragraph 3 of Part 1 of Schedule 13 to the Environmental Protection Act 1990 (c.43) (“the EPA 1990”), section 21(3A) was inserted by section 197 of, and paragraph 6 of Schedule 11 to, the Planning Act 2008 (c.29) (“the 2008 Act”), section 25 has been amended by section 144 of, and paragraph 8 of Part 1 of Schedule 13 to, the EPA 1990, sections 25 and 84 of, and paragraphs 13 and 30 of Schedule 3 and Part 1 of Schedule 19 to, the Planning and Compensation Act 1991 (c. 34) and section 196(4) and paragraphs 25, 28(a) and 28(b) of Schedule 10 to, the 2008 Act, section 26A was inserted by section 144 of, and paragraph 9 of Part 1 of Schedule 13 to, the EPA 1990, section 28 has been amended by sections 144 and 162 of, and paragraph 2(4) of Part 1 of Schedule 13 and Part 7 of Schedule 16 to, the EPA 1990 and section 40(4) was inserted by section 118(1) of and paragraph 27 of Schedule 6 to the Planning and Compulsory Purchase Act 2004 (c.5).

(d) O.J. L 345, 23.12.2008, p. 68.

(e) S.I. 1992/656; relevant amendments were made by section 76(7) of the Utilities Act 2000 (c.27) and by S.I. 1999/981, S.I. 2006/1282, S.I. 2006/1283, S.I. 2009/1901, S.I.2010/1050 and S.I. 2014/162.

“the Act” means the Planning (Hazardous Substances) Act 1990;

“commencement date” means the date these Regulations come into force;

“COMAH competent authority” means—

- (a) in relation to a nuclear site the Office of Nuclear Regulation and the Environment Agency acting jointly,
- (b) otherwise, the Health and Safety Executive and the Environment Agency acting jointly;

“the Directive” means Directive 2012/18/EU on the control of major-accident hazards involving dangerous substances(a); and

“nuclear site” has the same meaning as in section 112(1) of the Energy Act 2013(b).

(2) In these Regulations—

- (a) a reference to a section is a reference to that section of the Act, unless there is a contrary indication; and
- (b) a reference to a numbered form is a reference to the correspondingly numbered form in Schedule 2.

(3) Schedule 1 (hazardous substances and controlled quantities) is to be construed in accordance with the notes to that Schedule.

(4) References to sections of the principal Act mentioned in regulations 15, 17, 18 and 19 (enforcement) are, in those sections and these Regulations, to be construed as references to those sections as modified by these Regulations in relation to hazardous substances control.

(5) References in these Regulations to Regulation (EC) No 1272/2008 of the European Parliament and of the Council of 16 December 2008 (“the CLP Regulation”) on classification, labelling and packaging of substances and mixtures are references to that regulation as amended from time to time.

## PART 2

### Hazardous substances, controlled quantities and exemptions

#### Hazardous substances and controlled quantities

3. For the purpose of the Act—

- (a) hazardous substances are substances, mixtures or preparations—
  - (i) falling within a category in column 1 of Part 1 of Schedule 1,
  - (ii) specified in column 1 of Part 2 of Schedule 1, or
  - (iii) meeting the description in column 1 of Part 3 of Schedule 1, and present as raw materials, products, by-products, residues or intermediates.
- (b) the controlled quantity of a hazardous substance is the quantity specified in column 2 of Schedule 1 corresponding to that substance.

#### Exemptions

4.—(1) Subject to paragraph (2), hazardous substances consent is not required for the temporary presence of a hazardous substance during the period between its being unloaded from one means of transport and loaded onto another, including if it is in directly related intermediate temporary storage, while it is being transported from one place to another.

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(a) O.J. No. L 197, 24.7.2012, p. 1.

(b) 2013 c. 32.

(2) Paragraph (1) does not apply if the substance referred to in paragraph (1) is present on, over or under land in respect of which—

- (a) there is a hazardous substances consent for any substance; or
- (b) (not taking into account the quantity of the substance being transported) there is required to be such a consent for any substance.

(3) Hazardous substances consent is not required for the presence of a hazardous substance in, on, over or under land at military establishments, installations or storage facilities.

(4) Hazardous substances consent is not required for the presence of a hazardous substance where it is being transported in a pipeline, including a pumping station, outside any land in respect of which there is a hazardous substances consent for any substance, or in respect of which (not taking into account the quantity of the substance in the pipeline or pumping station) there is required to be such a consent for any substance.

(5) Hazardous substances consent is not required for the presence of a hazardous substance which has been unloaded from a ship or other sea going craft in an emergency until the expiry of the period of 14 days beginning with the day it was unloaded.

(6) For the purpose of paragraph (5), a substance is to be treated as having been unloaded from a craft in an emergency if—

- (a) it was unloaded from a craft to which a direction under section 3(1) of the Dangerous Vessels Act 1985<sup>(a)</sup> (directions by Secretary of State to harbour master) applied; or
- (b) it was unloaded from a craft after having been brought into a harbour or harbour area, within the meaning of regulation 2 of the Dangerous Substances in Harbour Areas Regulations 1987<sup>(b)</sup>, without requiring notification under paragraph (1) of regulation 6 of those regulations by virtue of an exemption under paragraph (5) of that regulation.

(7) Subject to paragraph (8), hazardous substances consent is not required for the presence of a hazardous substance on, over or under land at a waste land-fill site, including underground waste storage.

(8) Paragraph (7) does not apply to—

- (a) a site used for the storage of metallic mercury pursuant to Article 3(1)(b) of Regulation (EC) No 1102/2008 of the European Parliament and of the Council on the banning of exports of metallic mercury and certain mercury compounds and mixtures and the safe storage of metallic mercury<sup>(c)</sup>;
- (b) onshore underground gas storage in natural strata, aquifers, salt cavities and disused mines;
- (c) chemical and thermal processing operations and storage related to those operations; or
- (d) operational tailings disposal facilities, including tailing ponds or dams, containing a hazardous substance.

(9) Hazardous substances consent is not required for the presence of a hazardous substance which creates a hazard from ionising radiation if present on, over or under land in respect of which a nuclear site licence has been granted or is required for the purposes of section 1 of the Nuclear Installations Act 1965<sup>(d)</sup>.

(10) Hazardous substances consent is not required for the presence of a hazardous substance for the purposes of the exploitation, namely the exploration, extraction and processing, of minerals in mines and quarries, including by means of boreholes, except where present in connection with the matters referred to in paragraphs (8)(b) to (d) of this regulation.

(11) Hazardous substances consent is not required for the presence of a hazardous substance for the purposes of—

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(a) 1985 c. 22.

(b) S.I. 1987/37, to which there are amendments not relevant to these Regulations.

(c) O.J. No. L304, 14.11.2008, p. 75.

(d) 1965 c. 57; section 1 was substituted by paragraphs 16 and 17 of Schedule 12 to the Energy Act 2013 (c. 32).

- (a) the offshore exploration and exploitation of minerals, including hydrocarbons; or
  - (b) the storage of gas at underground offshore sites including both dedicated storage sites and sites where exploration and exploitation of minerals, including hydrocarbons are also carried out.
- (12) The presence of a quantity of a hazardous substance—
- (a) in a location where it cannot act as an initiator of a major accident elsewhere on the relevant site, and
  - (b) which is equal to or less than two per cent of the relevant controlled quantity for that substance,

is not to be taken into account when calculating the quantity of a hazardous substance present on, over or under land for any purpose of the Act or these Regulations.

(13) The presence of a substance for which an exemption is provided under paragraphs (1) to (11) is not to be taken into account when calculating the quantity of a hazardous substance present on, over or under land for any purpose of the Act or these Regulations.

(14) Where the conditions in paragraph (15) are met, hazardous substances consent is not required for a relevant minor change.

(15) The conditions are—

- (a) that the relevant minor change does not result in—
  - (i) a safety hazard change,
  - (ii) a lower-tier establishment becoming an upper-tier establishment, or
  - (iii) non-compliance with any condition imposed on any hazardous substances consent; and
- (b) that before the relevant minor change occurs, the hazardous substances authority receives from the COMAH competent authority notice in writing confirming—
  - (i) details of the relevant minor change, and
  - (ii) that the condition in sub-paragraph (a) is able to be met.

(16) In this regulation—

“relevant minor change” means a change to the quantity or type of hazardous substances present in, on or under land in relation to which there is a hazardous substances consent, where hazardous substances consent would be required for that change but for this regulation;

“safety hazard change” means a change to an area notified to a local planning authority by the Health and Safety Executive or the Office of Nuclear Regulation for the purposes of paragraphs (e) or (ea) of the Table in Schedule 5 to the Town and Country Planning (Development Management Procedure) Order 2010, where that change results in—

- (a) that area encompassing land which it did not previously encompass; or
- (b) where the notification of that area included the identification of zones within that area corresponding to levels of risk, the expansion of any such zone.

(17) Expressions appearing both in this regulation and in the Directive have the same meaning for the purposes of this regulation as they have for the purposes of the Directive.

## PART 3

### Express consent

#### **Applications for hazardous substances consent**

**5.**—(1) Subject to paragraph (2) and regulation 23 (application of the Act to hazardous substances authorities), an application for hazardous substances consent must—

- (a) be made to the hazardous substances authority;

- (b) include a site map and a substance location plan;
- (c) include details of—
  - (i) the location of the land to which the application relates;
  - (ii) the person in control of the land to which the application relates;
  - (iii) each hazardous substance for which consent is sought (“relevant substance”), including the maximum quantity of each relevant substance proposed to be present;
  - (iv) the main activities carried out or proposed to be carried out on the land to which the application relates;
  - (v) how and where each relevant substance is to be kept and used;
  - (vi) how each relevant substance is proposed to be transported to and from the land to which the application relates,
  - (vii) the vicinity of the relevant land, where such details are relevant to the risks or consequences of a major accident; and
  - (viii) the measures taken or proposed to be taken to limit the consequences of a major accident; and
- (d) be accompanied by the notices and certificates required by regulations 6 and 7.

(2) Subject to regulation 23 (application of the Act to hazardous substances authorities), an application to which section 13 applies (application for hazardous substances consent without a condition subject to which a previous consent was granted) must—

- (a) be made to the hazardous substances authority;
- (b) include a change of location plan, if the application relates to a condition restricting the location of a hazardous substance;
- (c) include in relation to any relevant consent, a copy of—
  - (i) the consent, where the relevant consent is a consent granted on an application under the Act;
  - (ii) the relevant claim, where the relevant consent is a consent deemed to be granted under section 11; or
  - (iii) the relevant direction, where the relevant consent is a consent deemed to be granted under section 12;
- (d) identify any condition previously imposed on the relevant consent which—
  - (i) it is proposed should no longer be imposed on the consent; or
  - (ii) it is proposed should only be imposed in a modified form;
- (e) for any condition identified under paragraph (d)(i), give the reasons why it should not be imposed;
- (f) for any condition identified under paragraph (d)(ii)—
  - (i) indicate the proposed modification; and
  - (ii) give the reasons why it should only be imposed in a modified form;
- (g) describe any relevant changes in circumstances since the date of the relevant consent; and
- (h) be accompanied by the notices and certificates required by regulations 6 and 7.

(3) An application under section 17 (application for the continuation of consent following a change of control) must—

- (a) be made to the hazardous substances authority;
- (b) include a change of control plan;
- (c) include, in relation to any relevant consent, whichever of the documents listed in paragraph (2)(c) is applicable to the relevant consent;
- (d) state the date on which the change in the person in control of part of the land is to take place, where known;

- (e) describe the use of each area of the site identified in the change of control plan;
  - (f) describe any relevant changes in circumstances since the relevant consent was granted; and
  - (g) be accompanied by the notices and certificates required by regulations 6 and 7.
- (4) Any application to which this regulation applies and anything required to accompany it must, if requested by the hazardous substances authority, be submitted in triplicate.
- (5) In this regulation—
- “change of control plan” is a plan of the land to which the application relates, drawn to a scale of not less than 1:2,500, which identifies each area of the site under separate control after the proposed change of control;
- “change of location plan” is a plan of the land to which the application relates, drawn to a scale of not less than 1:2,500, which identifies the location of the hazardous substance at the date of the application and the proposed location requiring the application;
- “relevant consent” means the existing hazardous substances consent to which the application relates;
- “site map” is a map, reproduced from, or based on, an Ordnance Survey map with a scale of not less than 1:10,000, which identifies the land to which the application relates and shows National Grid lines and reference numbers; and
- “substance location plan” is a plan of the land to which the application relates, drawn to a scale of not less than 1:2,500, which identifies—
- (a) any area of the land intended to be used for the storage of the substance;
  - (b) where the substance is to be used in a manufacturing, treatment or other industrial process, the location of the major items of plant involved in that process in which the substance will be present; and
  - (c) access points to and from the land.
- (6) Regulations 6 to 13 apply to applications made under section 17 as they apply to applications for hazardous substances consent.

### **Publication of notices of applications**

**6.—**(1) Before making an application for hazardous substances consent to the hazardous substances authority, the applicant must, during the 21 day period immediately preceding the application—

- (a) inform the public by notice published in a local newspaper circulating in the locality in which the land to which the application relates is situated, or by other appropriate means, including electronic media, of the following matters—
  - (i) a description of the proposal and the address or location of the land to which the application relates;
  - (ii) where applicable, the fact that the proposal is, or is part of, a project that is subject to a national or transboundary environmental impact assessment or to consultations between Member States in accordance with Article 14(3) of the Directive;
  - (iii) that the hazardous substances authority (from which relevant information can be obtained) will decide whether or not to grant consent, and if to grant, will decide on what conditions to grant;
  - (iv) that representations (including comments or questions) may be made to the hazardous substances authority;
  - (v) details of how such representations should be made and the time period for making representations, which must be not less than 21 days beginning with the last date on which any notice under this regulation was published;
  - (vi) an indication of the times and places where, or means by which, relevant information will be made available; and

- (b) subject to paragraphs (2) and (3), post a notice containing the information referred to in paragraph (a) on the land to which the application relates for not less than 7 days sited and displayed in such a way as to be easily legible without entering onto the land.
- (2) An applicant is not required to comply with paragraph (1)(b) if—
  - (a) the applicant has no right of access or other rights in respect of the land which would enable the applicant to post the notice as required; and
  - (b) the applicant has taken all reasonable steps to acquire the rights but has failed.
- (3) The applicant is not to be treated as having failed to comply with paragraph (1)(b) if the notice is, without any fault or intention of the applicant, removed, obscured or defaced before the 7 days referred to in that paragraph have elapsed, so long as the applicant has taken reasonable steps for protection of the notice and, if need be, its replacement.
- (4) An application for hazardous substances consent must not be entertained by the hazardous substances authority unless it is accompanied by—
  - (a) a copy of the notice referred to in paragraph (1) certified by, or on behalf of, the applicant as having been published in accordance with paragraph (1)(a);
  - (b) where published in a local newspaper, details of the name of the newspaper and the date of its publication;
  - (c) where published by other means, details of those other means (1); and
  - (d) the appropriate certificate on Form 1, signed by or on behalf of the applicant.

#### **Notification of applications to owners**

7.—(1) An application for hazardous substances consent must not be entertained by the hazardous substances authority unless it is accompanied by whichever of certificates A to D set out in Form 2 is appropriate, signed by or on behalf of the applicant.

(2) The required notice referred to in certificates B and C of Form 2 must, in the case of an application for hazardous substances consent, be a notice given on Form 3 and must invite any owner on whom the notice is served to make representations on the application to the hazardous substances authority and specify a time period for making representations, which must be not less than 21 days beginning with the date of service of the notice.

#### **Inspection of applications**

8. The applicant must make a copy of the application available for inspection at a place within the locality of the application site during the period or periods allowed for making representations pursuant to regulation 6(1) and 7(2).

#### **Receipt of applications by hazardous substances authority**

9.—(1) When the hazardous substances authority receive an application for hazardous substances consent or an application for any consent, agreement or approval required by a condition imposed on a grant of hazardous substances consent, they must, as soon as practicable, acknowledge receipt of the application in writing.

(2) Where, in the opinion of the hazardous substances authority, the application is invalid, the authority must, as soon as practicable, notify the applicant of their opinion, giving their reasons.

(3) For the purposes of this regulation and regulations 10 and 11, an application for hazardous substances consent is to be taken to have been received when each of the following events has occurred—

- (a) an application complying with regulation 5 and any certificate or documents required by regulations 6 and 7 have been served on the hazardous substances authority; and
- (b) any fee required to be paid in respect of the application has been paid to that authority.

## Consultation before the grant of hazardous substances consent

10.—(1) Except where the body or person concerned has notified the hazardous substances authority that they do not wish to be consulted, the authority must, before determining an application for hazardous substances consent, consult—

- (a) the Health and Safety Executive;
- (b) where the land to which the application relates is, or is on, a nuclear site, the Office for Nuclear Regulation;
- (c) the district or London borough council or county council concerned, where that council is not also the hazardous substances authority;
- (d) the parish council concerned;
- (e) the fire and civil defence authority concerned, where that authority is not also the hazardous substances authority;
- (f) the COMAH competent authority;
- (g) the public gas transporter concerned;
- (h) the electricity board concerned;
- (i) where the land to which the application relates is within 2 kilometres of a royal palace, park or residence, the Secretary of State;
- (j) where the land to which the application relates is in an area designated as a new town, the development corporation for the new town;
- (k) where the land to which the application relates is situated within 2000 metres of—
  - (i) an adjacent county, district or London borough, the council for that county, district or London borough;
  - (ii) the area of an adjacent fire authority and civil defence authority, that authority; or
  - (iii) an adjacent new town, the development corporation for the new town;
- (l) where it appears to the hazardous substances authority dealing with the application that land in the area of any other hazardous substances authority may be affected, that authority;
- (m) where the application relates to land in an area to which section 28(1) of the Wildlife and Countryside Act 1981<sup>(a)</sup> applies (sites of special scientific interest) or where it appears to the hazardous substances authority dealing with the application that an area of particular natural sensitivity or interest may be affected, in England, Natural England, or in Wales, the Natural Resources Body for Wales;
- (n) where the application relates to land in an area of coal working notified to the hazardous substances authority by the British Coal Corporation or the Coal Authority, the Coal Authority; and
- (o) where the application relates to land which is used for disposal or storage of controlled waste, the waste disposal authority concerned, where that authority is not also the hazardous substances authority.

(2) The hazardous substances authority must also, before determining an application for hazardous substances consent, consult any other persons of whom the authority is aware, including any non-governmental organisation promoting environmental protection, who are affected or likely to be affected by, or have an interest in, the application, and who in the authority's opinion are unlikely to become aware of the application through the notices under regulation 6.

(3) Where, under this regulation, a hazardous substances authority is required to consult in respect of an application, they must, unless a copy of the application has been served on the

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<sup>(a)</sup> 1981 c. 69. Section 28 was substituted by paragraph 1 of Schedule 9 to the Countryside and Rights of Way Act 2000 (c. 37) and amended by section 105(1) of, and paragraph 79 of Part 1 of Schedule 11 to, the Natural Environment and Rural Communities Act 2006 (c. 16) and paragraph 2 of Part 2 of Schedule 13 to the Marine and Coastal Access Act 2009 (c. 23).

consultee by the applicant, serve the consultee with a copy of the application within 7 days of its receipt by the authority.

(4) In paragraph (1)(m) “area of particular natural sensitivity or interest” has the same meaning for the purposes of this regulation as it has for the purposes of the Directive.

(5) In paragraph (1)(n), “controlled waste” has the meaning given to that expression by section 75(4) of the Environmental Protection Act 1990(a) and “waste disposal authority” is to be construed in accordance with section 30(2)(b) of that Act.

(6) Where a hazardous substances authority is required to consult a body under paragraph—

(a) (1)(a) or (f), or

(b) (1)(m), where it appears to the authority that an area of particular natural sensitivity or interest may be affected,

the exception in paragraph (1) does not apply.

### **Determination of applications for hazardous substances consent**

**11.—**(1) A hazardous substances authority must not determine an application for hazardous substances consent before the expiry of—

(a) the period or periods allowed for making representations pursuant to regulation 6(1) and 7(2); and

(b) where the authority is required to consult under regulation 10, a period of 28 days beginning with the date on which the consultee is served with a copy of the application, or, where the authority is required to consult more than one consultee, beginning with the date by which all consultees have been so served.

(2) In determining an application for hazardous substances consent, the hazardous substances authority must take into account the results of the consultation undertaken in relation to that application.

(3) Subject to paragraph (1), a hazardous substances authority must, within the period specified in paragraph (4), give the applicant written notice of their decision or notice that the application has been referred to the Secretary of State for determination.

(4) The period specified for the purposes of paragraph (3) is—

(a) a period of 8 weeks from the date when the application is received by the hazardous substances authority; or

(b) except where the applicant has already given notice of appeal to the Secretary of State, such extended period as may be agreed in writing by the applicant and the hazardous substances authority.

(5) When a hazardous substances authority give notice of a decision on an application the notice must, where hazardous substances consent is refused or is granted subject to conditions—

(a) state, clearly and precisely, their full reasons for the refusal or for any condition imposed; and

(b) include a statement to the effect that if the applicant is aggrieved by the decision the applicant may appeal to the Secretary of State under section 21 within 6 months of the date of the notice of the decision, or such longer period as the Secretary of State may at any time allow.

(6) The hazardous substances authority must, as soon as is practicable, inform the following persons of the terms of their decision—

(a) the Health and Safety Executive;

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(a) 1990 c. 43. Section 75(1) was amended by S.I. 2006/937. Section 75(2) was amended by S.I. 2011/988.

(b) There are amendments to this section none of which are relevant to these Regulations.

- (b) where the land to which the decision relates is, or is on, a nuclear site, the Office for Nuclear Regulation;
- (c) the district or London borough council or county council, where that council is not the hazardous substances authority concerned;
- (d) any other consultees who have made representations to them on the application; and
- (e) any owners who have made representations to them on the application.

### **Notice of reference of applications to the Secretary of State**

**12.** On referring any application to the Secretary of State pursuant to a direction under section 20, a hazardous substance authority must serve on the applicant a notice—

- (a) informing the applicant that the application has been referred to the Secretary of State;
- (b) setting out the reasons given by the Secretary of State for issuing the direction; and
- (c) containing a statement that the Secretary of State will, if the applicant so desires, give the applicant an opportunity of appearing before and being heard by a person appointed by the Secretary of State for that purpose.

### **Appeals**

**13.—(1)** An appeal to the Secretary of State under section 21 must be made within 6 months of—

- (a) the date of the notice of the decision giving rise to the appeal, or
- (b) in the case of an appeal under section 21(2), the expiry of the period specified in regulation 11(4),

or within such longer period as the Secretary of State may, at any time, allow.

(2) An appeal under section 21 must—

- (a) be made to the Secretary of State on a form obtained from the Secretary of State;
- (b) include the information specified in the form; and
- (c) be accompanied by the documents specified in paragraph (3) and the certificate required by paragraph (4).

(3) The documents mentioned in paragraph (2)(c) are—

- (a) the application made to the hazardous substances authority which has occasioned the appeal;
- (b) any notices and certificates required by regulations 6 and 7 which accompanied the application;
- (c) any correspondence with the authority relating to the application; and
- (d) the notice of decision, if any.

(4) An appeal under section 21 must not be entertained by the Secretary of State unless it is accompanied by whichever of certificates A to D is appropriate in Form 2, signed by or on behalf of the appellant.

(5) The required notice referred to in certificates B and C must, in the case of an appeal under section 21, be a notice given on Form 4.

(6) The appellant must send a copy of the completed notice of appeal form and accompanying certificate to the hazardous substances authority at the same time as the appeal is made to the Secretary of State.

## PART 4

### Enforcement

#### **Hazardous substances contravention notices**

**14.**—(1) A hazardous substances contravention notice must identify the land to which the notice relates, whether by reference to a plan or otherwise.

(2) The persons prescribed pursuant to section 24(4)(c) (other persons to be given notice) are all persons having an interest in the land which in the opinion of the authority issuing the notice is materially affected by the notice.

(3) Every copy of a hazardous substances contravention notice served pursuant to section 24(4) must be accompanied by a statement setting out—

- (a) the hazardous substances authority's reasons for issuing the notice; and
- (b) the right of appeal to the Secretary of State against the notice, and the persons by whom, grounds upon which and time within which such an appeal may be brought under section 174 of the principal Act.

#### **Appeals against hazardous substances contravention notices**

**15.**—(1) Sections 174, 175(3), (6), 176 and 177 of the principal Act apply to appeals against hazardous substances contravention notices, subject to the modifications set out in Part 1 of Schedule 3.

(2) The provisions of those sections, as modified under paragraph (1), are set out in Part 5 of Schedule 3.

#### **Appeals: supplementary**

**16.**—(1) A person who appeals against a hazardous substances contravention notice must, at the same time as notice of the appeal is given or sent to the Secretary of State under section 174(3) of the principal Act, serve on the hazardous substances authority a copy of the notice of appeal and accompanying material required by section 174(4) of that Act.

(2) The hazardous substances authority must, within 28 days of being served with the notice of appeal, serve on the Secretary of State and on the appellant a statement—

- (a) setting out their submissions in relation to each ground of appeal; and
- (b) indicating whether they would be prepared to grant hazardous substances consent for the presence on, over or under the land of any quantity of the hazardous substance to which the hazardous substances contravention notice relates and, if so, particulars of the conditions, if any, which they would wish to impose on the consent.

(3) The hazardous substances authority must, within that 28 day period, give notice of the appeal to occupiers of properties in the locality of the site to which the hazardous substances contravention notice relates.

#### **Effect of hazardous substances contravention notices, etc**

**17.**—(1) Sections 178 to 181 of the principal Act have effect in relation to hazardous substances contravention notices, subject to the modifications set out in Part 2 of Schedule 3.

(2) The provisions of those sections, as modified under paragraph (1), are set out in Part 5 of Schedule 3.

## **Enforcement register**

**18.**—(1) Section 188 of the principal Act (register of enforcement and stop notices) has effect in relation to hazardous substances contravention notices, subject to the modifications set out in Part 3 of Schedule 3.

(2) The provisions of that section, as modified under paragraph (1), are set out in Part 5 of Schedule 3.

## **Validity**

**19.**—(1) Sections 285 and 289 of the principal Act apply to appeals against hazardous substances contravention notices, subject to the modifications set out in Part 4 of Schedule 3.

(2) Section 25(2) is subject to any order under section 289(4A) of the principal Act, as applied by paragraph (1).

(3) The provisions of section 285 and 289 of the principal Act, as modified under paragraph (1), are set out in Part 5 of Schedule 3.

## **PART 5**

### **Consents register**

## **Consents register**

**20.**—(1) The register required by section 28(1) must be kept in 6 parts—

- (a) Part 1 must contain a copy of every application for hazardous substances consent made to the hazardous substances authority and not finally determined;
- (b) Part 2 must contain, in respect of every application for hazardous substances consent made to the hazardous substances authority—
  - (i) a copy of the application;
  - (ii) particulars of any direction given under section 20;
  - (iii) the decision (if any) of the authority, including details of any conditions subject to which consent was granted and the date of the decision; and
  - (iv) the reference number, date and effect of any decision of the Secretary of State, whether on a reference under section 20 or on an appeal under section 21;
- (c) Part 3 must contain a copy of every order revoking or modifying hazardous substances consent made by the hazardous substance authority and the date and effect of any confirmation by the Secretary of State in accordance with section 15;
- (d) Part 4 must contain, in respect of every hazardous substances consent deemed to be granted under section 11(3), a copy of the relevant claim form;
- (e) Part 5 must contain a copy of every hazardous substances consent deemed to be granted by virtue of a direction given by a government department under section 12; and
- (f) Part 6 must contain a copy of any direction under section 27 sent to the authority by the Secretary of State.

(2) Where the Secretary of State grants hazardous substances consent under section 177 of the principal Act on the determination of an appeal against a hazardous substances contravention notice, the hazardous substances authority for the land covered by the consent must enter the date and effect of that decision in Part 2 of the register.

(3) Parts 1 and 2 of the register must contain the main reports and advice referred to in Article 15(3)(a) of the Directive.

(4) Any decision required to be contained in the register must be accompanied by details of—

- (a) the content of the decision and the reasons on which it is based, including any subsequent updates; and
  - (b) the results of the consultations held before the decision was taken and an explanation of how they were taken into account in that decision.
- (5) The register must include an index to enable any person to trace an entry in the register.
- (6) Every entry in the register must be made within 14 days of the relevant information being available to the hazardous substances authority.
- (7) The register must be kept at the principal office of the hazardous substances authority.
- (8) For the purposes of paragraph (1)(a), an application is not to be treated as finally determined unless—
- (a) it has been decided by the hazardous substances authority (or the period specified in regulation 11(4) has expired without their giving a decision) and the period specified in regulation 13(1) has expired without any appeal having been made to the Secretary of State;
  - (b) it has been referred to the Secretary of State under section 20 or an appeal has been made to the Secretary of State under section 21, the Secretary of State's decision has been issued and the period of 6 weeks specified in section 22(1) has expired without any application having been made to the High Court under that section;
  - (c) an application has been made to the High Court under section 22 and the matter has been determined, either by final dismissal of the application by a Court or by the quashing of the Secretary of State's decision and the issue of a fresh decision (without a further application under section 22 being duly made); or
  - (d) it has been withdrawn by the applicant before being determined or an appeal has been withdrawn by the applicant before the Secretary of State's decision has been issued.

## PART 6

### Fees

#### **Fees for applications**

**21.**—(1) Subject to paragraph (3), a fee must be paid to a hazardous substances authority on an application for hazardous substances consent as follows—

- (a) if section 13(1) applies (new consent without previous conditions), £200;
- (b) if section 13(1) does not apply and the quantity specified in the application as the maximum quantity proposed to be present exceeds twice the controlled quantity, £400; and
- (c) in all other cases, £250.

(2) Subject to paragraph (3), a fee must be paid to a hazardous substances authority on an application for the continuation of hazardous substances consent under section 17(1) of £200.

(3) Where applications relating to the same site are made to two or more hazardous substances authorities, a fee is to be paid only to the authority in whose area the largest part of the site is situated and the amount payable is the amount that would have been payable if the application had fallen to be made to one authority in relation to the whole site.

(4) Any fee due in respect of an application must accompany the application when it is made to the hazardous substances authority.

(5) Any fee paid pursuant to this regulation must be refunded if the application is rejected as invalidly made.

## **Fees for deemed applications**

22.—(1) Subject to paragraph (5), a fee must be paid to the Secretary of State in every case where an application for hazardous substances consent is deemed to have been made by virtue of section 177(5) of the principal Act (in consequence of an appeal under section 174 of that Act against a hazardous substances contravention notice).

(2) The fee mentioned in paragraph (1) is payable by every person who has made a valid appeal against the relevant hazardous substances contravention notice and whose appeal has not been withdrawn before the date on which the Secretary of State issues a notice under paragraph (4).

(3) Subject to paragraph (7), the fee payable is the amount which would be payable under regulation 21 if the application were an application to which that regulation applied.

(4) The fee due must be paid at such time as the Secretary of State may in the particular case specify by notice in writing to the appellant.

(5) This regulation does not apply where the appellant had—

- (a) before the date when the hazardous substances contravention notice was issued, applied to the hazardous substances authority for hazardous substances consent for the presence of the quantity of the substance to which the notice relates, and had paid to the authority the fee payable in respect of that application, or
- (b) before the date specified in the notice as the date on which it is to take effect, made an appeal to the Secretary of State against the refusal of the hazardous substances authority to grant consent,

and at the date when the relevant notice was issued that application or, in the case of an appeal made before that date, that appeal, had not been determined.

(6) Any fee paid in respect of the deemed application must be refunded to the appellant by the Secretary of State if—

- (a) the Secretary of State declines jurisdiction on the relevant appeal on the grounds that it does not comply with one or more of the requirements of subsections (1) to (3) of section 174 of the principal Act;
- (b) the Secretary of State dismisses the relevant appeal in exercise of the powers under section 176(3)(a) of the principal Act (on the grounds that the appellant has failed to comply with section 174(4) of that Act);
- (c) the Secretary of State allows the relevant appeal and quashes the relevant hazardous substances contravention notice in exercise of the powers under section 176(3)(b) of the principal Act (on the grounds that the hazardous substances authority have failed to comply with regulation 19(2) of these Regulations);
- (d) the relevant appeal is withdrawn with the result that there are at least 21 days between the date on which notice in writing of the withdrawal is received by the Secretary of State and—
  - (i) the date (or in the event of postponement, the latest date) appointed for the holding of an inquiry or hearing into that appeal; or
  - (ii) in the case of an appeal which is being dealt with by written representations, the date (or in the event of postponement, the latest date) appointed for the inspection of the site to which the notice relates;
- (e) the hazardous substances authority withdraws the relevant hazardous substances contravention notice before it takes effect, or the Secretary of State decides that the notice is a nullity;
- (f) the Secretary of State allows the relevant appeal on any of the grounds set out in section 174(2)(b) to (e) of the principal Act; or
- (g) the Secretary of State allows the relevant appeal on the ground that the notice is invalid, or that it contains a defect, error or misdescription which cannot be corrected under section 176(1)(a) of the principal Act.

(7) Where a hazardous substances contravention notice is varied under section 176(1) of the principal Act otherwise than to take account of a grant of hazardous substances consent under section 177(1), and the fee calculated in accordance with paragraph (2) would have been a lesser amount if the original notice had been in the terms of the varied notice, the fee payable is that lesser amount and any excess amount already paid must be refunded.

(8) In determining a fee under paragraph (6) no account is to be taken of any change in fees which takes effect after the making of the deemed application.

## PART 7

### Application of the Act to hazardous substances authorities

#### Application of the Act to hazardous substances authorities

**23.**—(1) Any application by a hazardous substances authority for hazardous substances consent must be made to the Secretary of State.

(2) Regulations 5 to 8, 10 and 11(2) apply to the making of such an application as they apply to applications made to a hazardous substances authority.

(3) For the purpose of regulation 20, an application made to the Secretary of State by a hazardous substances authority is to be treated as an application made to the hazardous substances authority and referred to the Secretary of State under section 20.

(4) Section 9 (other than subsection (2)(e)) applies in relation to an application made to the Secretary of State by a hazardous substances authority as it applies in relation to an application made to a hazardous substances authority.

(5) For the purpose of section 22, a decision of the Secretary of State on an application made to him by a hazardous substances authority is to be treated as a decision under section 20.

## PART 8

### Policies and public consultation and participation

#### Policies

**24.**—(1) In formulating any relevant policy, the Secretary of State must ensure that the following matters are taken into account—

- (a) the objectives of preventing major accidents and limiting the consequences of such accidents for human health and the environment; and
- (b) the matters referred to in Article 13(2) of the Directive.

(2) In this regulation—

“relevant policy” means—

- (a) any national policy statement designated under section 5(1) of the Planning Act 2008<sup>(a)</sup>; and
- (b) any policy falling within section 19(2)(a) of the Planning and Compulsory Purchase Act 2004<sup>(b)</sup> where in the opinion of the Secretary of State that policy concerns matters affecting the risks or consequences of a major accident.

(3) Expressions appearing both in this regulation and in the Directive have the same meaning for the purposes of this regulation as they have for the purposes of the Directive.

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(a) 2008 c. 29.

(b) 2004 c. 5; section 19(1) was amended by section 5(b) of the Planning Act 2008 (c. 29). There are other amendments to section 19 which are not relevant to these Regulations.

## Plans and programmes

25.—(1) Subject to paragraph (3), this regulation applies where a responsible authority proposes to prepare, modify or review a relevant plan or programme.

(2) Where this regulation applies, the responsible authority must—

- (a) take such measures as it considers appropriate to ensure that public consultees are given early and effective opportunities to participate in the preparation, modification or review of the relevant plan or programme; and
- (b) in doing so, take such measures as it considers appropriate to ensure that—
  - (i) public consultees are informed of any proposals to prepare, modify or review a relevant plan or programme;
  - (ii) relevant information about such proposals is made available to public consultees, including information about the right to participate in decision-making and about the authority to which comments or questions may be submitted;
  - (iii) public consultees are entitled to express comments and opinions when all options are open before decisions on the relevant plan and programme are made; and
  - (iv) any periods provided for public participation under this regulation allow public consultees sufficient time to prepare and participate in decision-making in relation to the relevant plan or programme;
- (c) take into account the results of the public participation in making those decisions; and
- (d) take such measures as it considers appropriate to inform the public consultees about the decisions taken and the reasons and considerations on which those decisions are based, including information about the public participation process.

(3) This regulation does not apply to a relevant plan or programme in relation to which a public participation procedure is carried out under Part 3 of the Environmental Assessment of Plans and Programmes Regulations 2004(a).

(4) In this regulation—

“public consultees” means persons of whom the responsible authority is aware, including any non-governmental organisation promoting environmental protection, who are affected or likely to be affected by, or have an interest in, the relevant plan or programme in question;

“relevant plan or programme” means a general plan or programme relating to—

- (a) planning for new establishments pursuant to Article 13 of the Directive, or
- (b) new developments around establishments where the siting or developments may increase the risk or consequences of a major accident pursuant to Article 13 of the Directive; and

“responsible authority” means—

- (a) the authority by which or on whose behalf a relevant plan or programme is prepared; and
- (b) where, at any particular time, that authority ceases to be responsible, or solely responsible, for taking steps in relation to the plan or programme, the person who, at that time, is responsible (solely or jointly with the authority) for taking those steps.

(5) This regulation applies to a relevant plan or programme relating—

- (a) solely to the whole or any part of England; or
- (b) to England (whether as to the whole or part) and any other part of the United Kingdom.

(6) Any steps taken before the commencement date in relation to a relevant plan or programme may be treated as steps taken for the purposes of this regulation.

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(a) S.I. 2004/1633, amended by S.I. 2011/1043; there are other amending instruments but none is relevant.

## Development around establishments

26.—(1) A competent authority must, before deciding to give any consent, permission or other authorisation for a relevant project, take such measures as it considers appropriate to ensure that the public concerned is given an early opportunity to give its opinion on the relevant project.

(2) In doing so, the competent authority must take such measures as it considers appropriate to ensure that—

- (a) the public is informed by public notices or other appropriate means, including electronic media where available, of the following matters early in the procedure for the taking of a decision or, at the latest, as soon as the information can reasonably be provided—
  - (i) the subject of the relevant project;
  - (ii) where applicable, the fact that a project is subject to a national or transboundary environmental impact assessment or to consultations between Member States in accordance with Article 14(3) of the Directive;
  - (iii) details of the competent authority responsible for taking the decision, from which relevant information can be obtained and to which comments or questions can be submitted;
  - (iv) an indication of the times and places where, or means by which, the relevant information will be made available;
  - (v) details of the period for transmitting comments or questions; and
  - (vi) the nature of possible decisions or, where there is one, the draft decision;
- (b) the following is made available to the public concerned—
  - (i) the main reports and advice issued to the competent authority at the time when the public concerned was informed pursuant to paragraph (2)(a); and
  - (ii) information other than that referred to in paragraph (2)(a) which is relevant for the decision in question and which only becomes available after the public concerned was informed in accordance with that paragraph;
- (c) the public concerned is entitled to express comments and opinions to the competent authority before a decision is taken; and
- (d) the results of the consultations held pursuant to this regulation are taken into account in the taking of a decision.

(3) After deciding whether to give any consent, permission or other authorisation for a relevant project, the competent authority must make available to the public—

- (a) the content of the decision and the reasons on which it is based, including any subsequent updates;
- (b) the results of the consultations held before the decision was taken and an explanation of how they were taken into account in that decision.

(4) In this regulation—

“competent authority” means any Minister of the Crown (as defined in the Ministers of the Crown Act 1975(a)), government department, or local authority with responsibility for deciding whether to give a consent, permission or other authorisation referred to in paragraph (1);

“the public concerned” means persons of whom the competent authority is aware, including any non-governmental organisation promoting environmental protection, who are affected or likely to be affected by, or have an interest in, the taking of a decision to give the consent, permission or other authorisation referred to in paragraph (1); and

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(a) 1975 c. 26.

“relevant project” means development falling within paragraphs (e), (ea) or (zc) of Schedule 5 to the Town and Country Planning (Development Management Procedure) (England) Order 2010(a).

- (5) In this regulation, a reference to giving consent, permission or other authorisation includes—
- (a) granting planning permission on an application under Part 3 of the principal Act (control over development);
  - (b) granting planning permission on an application under section 293A of that Act (urgent Crown development)(b);
  - (c) granting planning permission, or upholding a decision of the local planning authority to grant planning permission (whether or not subject to the same conditions and limitations as those imposed by the local planning authority), on determining an appeal under section 78 of that Act (right to appeal against planning decisions)(c) in respect of such an application;
  - (d) granting planning permission under—
    - (i) section 141(2)(a) of that Act (action in relation to purchase notice); or
    - (ii) section 177(1)(a) of that Act (grant or modification of planning permission on appeals against enforcement notices);
  - (e) directing under the following provisions that planning permission is deemed to be granted—
    - (i) subsection (1), (2) or (2A) of section 90 of that Act (development with government authorisation); or
    - (ii) section 5(1) of the Pipe-lines Act 1962(d) (provisions with respect to planning permission concerning pipe-lines);
  - (f) making—
    - (i) a local development order under section 61A of the principal Act(e);
    - (ii) a neighbourhood development order under section 61E of that Act(f);
    - (iii) a special development zone scheme under section 82 of that Act;
    - (iv) an order designating an enterprise zone under Schedule 32 to the Local Government, Planning and Land Act 1980(g);
    - (v) a development consent order under section 114 of the Planning Act 2008;
    - (vi) an order under section 102 of the principal Act (orders requiring discontinuance of use or alteration or removal of buildings or works)(h), including an order made under that section by virtue of section 104 of that Act (powers in relation to section 102 orders) which grants planning permission, or confirming any such order under section 103 of that Act (confirmation of section 102 orders); or
    - (vii) an order under paragraph 1 of Schedule 9 to that Act (order requiring discontinuance of mineral working)(i), including an order made under that paragraph by virtue of paragraph 11 of that Schedule to that Act (powers in relation to orders under Schedule 9) which grants planning permission; or

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(a) S.I. 2010/2184.

(b) Section 293A was inserted by section 82(1) of the Planning and Compulsory Purchase Act 2004 (“the 2004 Act”) (c. 5).

(c) Section 78 was amended by section 17(2) of Planning and Compensation Act 1991 (c. 34), sections 40(2)(e) and 43(2) of the 2004 Act and paragraphs 1 and 3 of Schedule 10 and paragraphs 1 and 2 of Schedule 11 to the Planning Act 2008 (c. 9).

(d) 1962 c. 58.

(e) Section 61A was inserted by section 40(1) of the 2004 Act and has been amended by sections 188 and 238 of, and Schedule 13 to, the Planning Act 2008.

(f) Section 61E was inserted by inserted by section 116 of, and Schedule 9 to, the Localism Act 2011 (c. 20).

(g) 1980 c. 65.

(h) Section 102 was amended by paragraph 6 of Schedule 1 and paragraph 21 of Schedule 7 to the Planning and Compensation Act 1991 (c. 34).

(i) Paragraph 1 of Schedule 9 was amended by paragraph 15 of Schedule 1 to the Planning and Compensation Act 1991 (c. 34).

- (g) directing under the following provisions that if an application is made for planning permission it must be granted—
  - (i) section 141(3) of that Act (action in relation to purchase notice); or
  - (ii) section 35(5) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (action in relation to listed building purchase notice)(a); and
- (h) in relation to an authorisation which is capable of being varied or modified, a reference to the variation or modification of such a consent, permission or authorisation.

## PART 9

### Revocations, amendments, savings, transitional provisions and review

#### Revocations

27. The following Regulations are revoked to the extent specified, subject to the savings and transitional provisions set out in this Part—

<i>(1) Regulations revoked</i>	<i>(2) References</i>	<i>(3) Extent of revocation</i>
Planning (Hazardous Substances) Regulations 1992	S.I. 1992/656	The Regulations so far as they apply to England
The Planning (Control of Major-Accident Hazards) Regulations 1999	S.I. 1999/981	The Regulations so far as they apply to England
The Planning (Hazardous Substances) (Amendment) (England) Regulations 2009	S.I. 2009/1901	The whole Regulations
The Planning (Hazardous Substances) (Amendment) (England) Regulations 2010	S.I. 2010/1050	The whole Regulations
The Heavy Fuel Oil (Amendment) Regulations 2014	S.I. 2014/162	The Regulations so far as they apply to England

#### Transitional exemptions: contravention of hazardous substances control

28.—(1) No offence is committed under section 23 of the Act and no hazardous substances contravention notice may be issued in relation to a hazardous substance which is on, over or under any land (“the relevant substance”) if—

- (a) the relevant substance was present on, over or under the land at any time during the establishment period;
- (b) hazardous substances consent was not required for the presence of the relevant substance at the time it was present during the establishment period; and
- (c) hazardous substances consent would have been required for the presence of the relevant substance had these Regulations been in force at that time.

(2) Paragraph (1) does not apply where the quantity of the relevant substance exceeds the maximum quantity of the relevant substance which was present on, over or under the land at any one time during the establishment period.

(3) In this regulation—

“establishment period” means the period of 12 months ending on the relevant date; and

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(a) 1990 c. 9.

“relevant date” means—

- (a) the commencement date; or
- (b) (if later) the date on which hazardous substances consent was first required for the relevant substance.

### **Transitional applications and appeals**

**29.**—(1) If an application or appeal relating to a hazardous substances consent made in accordance with the 1992 Regulations has not been determined by the commencement date, the application or appeal is taken to be made under these Regulations.

(2) Anything done under the 1992 Regulations in relation to that application or appeal before the commencement date is taken to be done under these Regulations.

### **Interpretation of existing consents**

**30.**—(1) In this regulation, “relevant consent” means a hazardous substances consent granted under the 1992 Regulations or a deemed consent claimed before the commencement date under which the following are expressly authorised—

- (a) the presence a category of substance listed in column 1 of part B of the Schedule to the 1992 Regulations; or
- (b) the presence of a substance named in column 1 of part A of the Schedule to the 1992 Regulations.

(2) This regulation applies to a relevant consent where the category or substance referred to in paragraph (1) above—

- (a) is not contained in Schedule 1 to these Regulations; or
- (b) is differently named or defined under Schedule 1 to these Regulations.

(3) Where this regulation applies references in a relevant consent to a category or substance referred to in paragraph (1) are to be interpreted as if these Regulations had not come into force.

### **Saving for deemed consent conditions**

**31.**—(1) This regulation applies to any consent that was deemed to be granted under section 11 or 30B before the commencement date.

(2) In relation to any consent to which this regulation applies—

- (a) the conditions set out in Schedule 3 of the 1992 Regulations continue to apply (unless any condition was removed following an application under section 13); and
- (b) those conditions continue to be interpreted in accordance with regulation 15 of the 1992 Regulations.

### **Other amendments**

**32.** Schedule 4 to these Regulations has effect.

### **Review**

**33.**—(1) The Secretary of State must from time to time—

- (a) carry out a review of these Regulations so far as they implement the land-use aspects of the Directive in relation to England;
- (b) set out the conclusions of the review in a report; and
- (c) publish the report.

(2) In carrying out the review the Secretary of State must, so far as is reasonable, have regard to how the Directive is implemented in other member states.

- (3) The report must in particular—
- (a) set out the objectives intended to be achieved by the land-use aspects of the Directive and by these Regulations;
  - (b) assess the extent to which those objectives are achieved; and
  - (c) assess whether those objectives remain appropriate and, if so, the extent to which they could be achieved with a system that imposes less regulation.
- (4) The first report under this regulation must be published before the end of the period of five years beginning with the commencement date.
- (5) Reports under this regulation must afterwards be published at intervals not exceeding five years.

## SCHEDULES

### SCHEDULE 1

Regulation 3

#### HAZARDOUS SUBSTANCES AND CONTROLLED QUANTITIES

Hazardous substances covered by the hazard categories listed in Column 1 of Part 1 of this Schedule are subject to the controlled quantity set out in Column 2 of Part 1.

Where a hazardous substance is covered by Part 1 of this Schedule and is also listed in Part 2, the controlled quantity set out in Column 2 of Part 2 apply.

#### PART 1

##### Categories of substances

This Part covers all hazardous substances falling under the hazard categories listed in Column 1:

<i>Column 1</i>	<i>Column 2</i>
Hazard categories in accordance with the CLP Regulation	Controlled quantity in tonnes of dangerous substances
<b>Section 'H' – HEALTH HAZARDS</b>	
H1 ACUTE TOXIC Category 1, all exposure routes	5
H2 ACUTE TOXIC — Category 2, all exposure routes — Category 3, inhalation exposure route (see note 7)	50
H3 STOT SPECIFIC TARGET ORGAN TOXICITY – SINGLE EXPOSURE STOT SE Category 1	50
<b>Section 'P' – PHYSICAL HAZARDS</b>	
P1a EXPLOSIVES (see note 8) — Unstable explosives or — Explosives, Division 1.1, 1.2, 1.3, 1.5 or 1.6, or — Substances or mixtures having explosive properties according to method A.14 of Regulation (EC) No 440/2008 (see note 9) and do not belong	10

to the hazard classes Organic peroxides or Self-reactive substances and mixtures	
P1b EXPLOSIVES (see note 8) Explosives, Division 1.4 (see note 10)	50
P2 FLAMMABLE GASES Flammable gases, Category 1 or 2	10
P3a FLAMMABLE AEROSOLS (see note 11.1) 'Flammable' aerosols Category 1 or 2, containing flammable gases Category 1 or 2 or flammable liquids Category 1	150 (net)
P3b FLAMMABLE AEROSOLS (see note 11.1) 'Flammable' aerosols Category 1 or 2, not containing flammable gases Category 1 or 2 nor flammable liquids category 1 (see note 11.2)	5,000 (net)
P4 OXIDISING GASES Oxidising gases, Category 1	50
P5a FLAMMABLE LIQUIDS — Flammable liquids, Category 1, or — Flammable liquids Category 2 or 3 maintained at a temperature above their boiling point, or — Other liquids with a flash point $\leq 60$ °C, maintained at a temperature above their boiling point (see note 12)	10
P5b FLAMMABLE LIQUIDS — Flammable liquids Category 2 or 3 where particular processing conditions, such as high pressure or high temperature, may create major-accident hazards, or — Other liquids with a flash point $\leq 60$ °C where particular processing conditions, such as high pressure or high temperature, may create major-accident hazards (see note 12)	50
P5c FLAMMABLE LIQUIDS Flammable liquids, Categories 2 or 3 not covered by P5a and P5b	5,000
P6a SELF-REACTIVE SUBSTANCES AND MIXTURES and ORGANIC PEROXIDES Self-reactive substances and mixtures, Type A or B or organic peroxides, Type A or B	10
P6b SELF-REACTIVE SUBSTANCES AND MIXTURES and ORGANIC PEROXIDES Self-reactive substances and mixtures, Type C, D, E or F or organic peroxides, Type C, D, E, or F	50
P7 PYROPHORIC LIQUIDS AND SOLIDS Pyrophoric liquids, Category 1 Pyrophoric solids, Category 1	50
P8 OXIDISING LIQUIDS AND SOLIDS Oxidising Liquids, Category 1, 2 or 3, or Oxidising Solids, Category 1, 2 or 3	50
Section 'E' – ENVIRONMENTAL HAZARDS	
E1 Hazardous to the Aquatic Environment in Category Acute 1 or Chronic 1	100
E2 Hazardous to the Aquatic Environment in Category Chronic 2	200

Section 'O' – OTHER HAZARDS	
O1 Substances or mixtures with hazard statement EUH014	100
O2 Substances and mixtures which in contact with water emit flammable gases, Category 1	100
O3 Substances or mixtures with hazard statement EUH029	50

## PART 2

### Named hazardous substances

<i>Column 1</i>	<i>CAS number ( 1 )</i>	<i>Column 2</i>
Hazardous substances		Controlled quantity (tonnes)
1. Ammonium nitrate (see note 13)	-	
2. Ammonium nitrate (see note 14)	-	1,250
3. Ammonium nitrate (see note 15)	-	350
4. Ammonium nitrate (see note 16)	-	10
5. Potassium nitrate (see note 17)	-	5,000
6. Potassium nitrate (see note 18)	-	1,250
7. Arsenic pentoxide, arsenic (V) acid and/or salts	1303-28-2	1
8. Arsenic trioxide, arsenious (III) acid and/or salts	1327-53-3	
9. Bromine	7726-95-6	20
10. Chlorine	7782-50-5	10
11. Nickel compounds in inhalable powder form: nickel monoxide, nickel dioxide, nickel sulphide, trinickel disulphide, dinickel trioxide	-	
12. Ethyleneimine	151-56-4	10
13. Fluorine	7782-41-4	10
14. Formaldehyde (concentration $\geq$ 90%)	50-00-0	5
15. Hydrogen	1333-74-0	2
16. Hydrogen chloride (liquefied gas)	7647-01-0	25
17. Lead alkyls	-	5
18. Liquefied flammable gases, Category 1 or 2 (including LPG) and natural gas (see note 19)	-	Liquefied Natural Gas (LNG): 15 Liquefied Petroleum Gas (LPG): 25 Any other liquefied flammable gases: 50
19. Acetylene	74-86-2	5
20. Ethylene oxide	75-21-8	5
21. Propylene oxide	75-56-9	5
22. Methanol	67-56-1	500
23. 4, 4'-Methylene bis (2-chloraniline) and/or salts, in powder form	101-14-4	

24. Methylisocyanate	624-83-9	
25. Oxygen	7782-44-7	200
26. 2,4 -Toluene diisocyanate 2,6 -Toluene diisocyanate	584-84-9 91-08-7	10
27. Carbonyl dichloride (phosgene)	75-44-5	0.3
28. Arsine (arsenic trihydride)	7784-42-1	0.2
29. Phosphine (phosphorus trihydride)	7803-51-2	0.2
30. Sulphur dichloride	10545-99-0	
31. Sulphur trioxide	7446-11-9	15
32. Polychlorodibenzofurans and polychlorodibenzodioxins (including TCDD), calculated in TCDD equivalent (see note 20)	-	
33. The following CARCINOGENS or the mixtures containing the following carcinogens at concentrations above 5% by weight: 4-Aminobiphenyl and/or its salts, Benzotrichloride, Benzidine and/or salts, Bis (chloromethyl) ether, Chloromethyl methyl ether, 1,2-Dibromoethane, Diethyl sulphate, Dimethyl sulphate, Dimethylcarbamoyl chloride, 1,2-Dibromo-3-chloropropane, 1,2-Dimethylhydrazine, Dimethylnitrosamine, Hexamethylphosphoric triamide, Hydrazine, 2- Naphthylamine and/or salts, 4-Nitrodiphenyl, and 1,3 Propanesultone	-	0.5
34. Petroleum products and alternative fuels (a) gasolines and naphthas, (b) kerosenes (including jet fuels), (c) gas oils (including diesel fuels, home heating oils and gas oil blending streams) (d) heavy fuel oils (e) alternative fuels serving the same purposes and with similar properties as regards flammability and environmental hazards as the products referred to in points (a) to (d)	-	2,500
35. Anhydrous Ammonia	7664-41-7	50
36. Boron trifluoride	7637-07-2	5
37. Hydrogen sulphide	7783-06-4	5
38. Piperidine	110-89-4	50
39. Bis(2-dimethylaminoethyl) (methyl)amin	3030-47-5	50
40. 3-(2-Ethylhexyloxy)propylamin	5397-31-9	50
41. Mixtures (*) of sodium hypochlorite classified as Aquatic Acute Category 1 [H400] containing		200

less than 5 % active chlorine and not classified under any of the other hazard categories in Part 1 of Schedule 1. _____ (* ) Provided that the mixture in the absence of sodium hypochlorite would not be classified as Aquatic Acute Category 1 [H400].		
42. Propylamine (see note 21)	107-10-8	500
43. Tert-butyl acrylate (see note 21)	1663-39-4	200
44. 2-Methyl-3-butenitrile (see note 21)	16529-56-9	500
45. Tetrahydro-3,5-dimethyl-1,3,5,-thiadiazine-2-thione (Dazomet) (see note 21)	533-74-4	100
46. Methyl acrylate (see note 21)	96-33-3	500
47. 3-Methylpyridine (see note 21)	108-99-6	500
48. 1-Bromo-3-chloropropane (see note 21)	109-70-6	500

(1) Substances and mixtures are classified in accordance with the CLP Regulation.

(2) Mixtures shall be treated in the same way as pure substances provided they remain within concentration limits set according to their properties under the CLP Regulation, or its latest adaptation to technical progress, unless a percentage composition or other description is specifically given.

(3) The controlled quantities set out above relate to each establishment.

The quantities to be considered for the application of these Regulations are the maximum quantities which are present or are likely to be present at any one time.

(4) The following rule governing the addition of hazardous substances, or categories of dangerous substances, applies where appropriate.

In the case of an establishment where no individual hazardous substance is present in a quantity above or equal to the relevant controlled quantity, the following rule must be applied to determine whether the establishment is covered by the relevant requirements of these Regulations.

These Regulations apply to establishments if the sum  $q_1/Q_{L1} + q_2/Q_{L2} + q_3/Q_{L3} + q_4/Q_{L4} + q_5/Q_{L5} + \dots$  is greater than or equal to 1,

where  $q_x$  = the quantity of dangerous substance x (or category of dangerous substances) falling within Part 1 or Part 2 of this Schedule; and

$Q_{Lx}$  = the relevant controlled quantity for hazardous substance or category x from Column 2 of Part 1 or from Column 2 of Part 2 of this Schedule.

This rule must be used to assess the health hazards, physical hazards and environmental hazards. It must therefore be applied three times—

- for the addition of hazardous substances listed in Part 2 that fall within acute toxicity category 1, 2 or 3 (inhalation route) or STOT SE category 1, together with hazardous substances falling within section H, entries H1 to H3 of Part 1;
- for the addition of hazardous substances listed in Part 2 that are explosives, flammable gases, flammable aerosols, oxidising gases, flammable liquids, self-reactive substances and mixtures, organic peroxides, pyrophoric liquids and solids, oxidising liquids and solids, together with hazardous substances falling within section P, entries P1 to P8 of Part 1;
- for the addition of hazardous substances listed in Part 2 that fall within hazardous to the aquatic environment acute category 1, chronic category 1 or chronic category 2, together with hazardous substances falling within section E, entries E1 and E2 of Part 1.

The relevant provisions of these Regulations apply where any of the sums obtained by (a), (b) or (c) is greater than or equal to 1.

<sup>(5)</sup> In the case of hazardous substances which are not covered by the CLP Regulation, including waste, but which nevertheless are present, or are likely to be present, in an establishment and which possess or are likely to possess, under the conditions found at the establishment, equivalent properties in terms of major accident potential, these must be provisionally assigned to the most analogous category or named hazardous substance falling within the scope of these Regulations.

<sup>(6)</sup> In the case of hazardous substances with properties giving rise to more than one classification, for the purposes of these Regulations the lowest controlled quantities apply. However, for the application of the rule in Note 4, the lowest controlled quantity for each group of categories in Notes 4(a), 4(b) and 4(c) corresponding to the classification concerned must be used.

<sup>(7)</sup> Hazardous substances that fall within Acute Toxic Category 3 via the oral route (H 301) fall under entry H2 ACUTE TOXIC in those cases where neither acute inhalation toxicity classification nor acute dermal toxicity classification can be derived, for example due to lack of conclusive inhalation and dermal toxicity data.

<sup>(8)</sup> The hazard class Explosives includes explosive articles (see Section 2.1 of Annex I to the CLP Regulation). If the quantity of the explosive substance or mixture contained in the article is known, that quantity must be considered for the purposes of these Regulations. If the quantity of the explosive substance or mixture contained in the article is not known, then, for the purposes of these Regulations, the whole article must be treated as explosive.

<sup>(9)</sup> Testing for explosive properties of substances and mixtures is only necessary if the screening procedure according to Appendix 6, Part 3 of the UN Recommendations on the Transport of Dangerous Goods, Manual of Tests and Criteria (UN Manual of Tests and Criteria)<sup>(a)</sup> identifies the substance or mixture as potentially having explosive properties.

<sup>(10)</sup> If Explosives of Division 1.4 are unpacked or repacked, they shall be assigned to the entry P1a, unless the hazard is shown to still correspond to Division 1.4, in accordance with the CLP Regulation.

<sup>(11.1)</sup> Flammable aerosols are classified in accordance with the Council Directive 75/324/EEC of 20 May 1975 on the approximation of the laws of the Member States relating to aerosol dispensers<sup>(b)</sup> (Aerosol Dispensers Directive). “Extremely flammable” and “Flammable” aerosols of Directive 75/324/EEC correspond to Flammable Aerosols Category 1 or 2 respectively of the CLP Regulation.

<sup>(11.2)</sup> In order to use this entry, it must be documented that the aerosol dispenser does not contain Flammable Gas Category 1 or 2 nor Flammable Liquid Category 1.

<sup>(12)</sup> According to paragraph 2.6.4.5 in Annex I to the CLP Regulation, liquids with a flash point of more than 35 °C need not be classified in Category 3 if negative results have been obtained in the sustained combustibility test L.2, Part III, section 32 of the UN Manual of Tests and Criteria. This is however not valid under elevated conditions such as high temperature or pressure, and therefore such liquids are included in this entry.

<sup>(13)</sup> Ammonium nitrate (5,000/10,000): fertilisers capable of self-sustaining decomposition

This applies to ammonium nitrate-based compound/composite fertilisers (compound/composite fertilisers contain ammonium nitrate with phosphate and/or potash) which are capable of self-sustaining decomposition according to the UN Trough Test (see UN Manual of Tests and Criteria, Part III, subsection 38.2), and in which the nitrogen content as a result of ammonium nitrate is—

- (a) between 15.75%<sup>(c)</sup> and 24.5%<sup>(d)</sup> by weight, and either with not more than 0.4% total combustible/organic materials or which fulfil the requirements of Annex III-2 to Regulation (EC) No 2003/2003 of the European Parliament and of the Council of 13 October 2003 relating to fertilisers<sup>(e)</sup>;
- (b) 15.75% by weight or less and unrestricted combustible materials.

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(a) More guidance on waiving of the test can be found in the A.14 method description, see Commission Regulation (EC) No 440/2008 of 30 May 2008 laying down test methods pursuant to Regulation (EC) No 1907/2006 of the European Parliament and of the Council on the Registration Evaluation, Authorisation and Restriction of Chemicals (REACH) (O.J. L 142, 31.5.2008, p. 1)

(b) O.J. L 147, 9.6.1975, p. 40.

(c) 15.75% nitrogen content by weight as a result of ammonium nitrate corresponds to 45% ammonium nitrate.

(d) 24.5% nitrogen content by weight as a result of ammonium nitrate corresponds to 70% ammonium nitrate.

(e) O.J. L 304, 21.11.2003, p. 1.

<sup>(14)</sup> Ammonium nitrate (1,250/5,000): fertiliser grade

This applies to straight ammonium nitrate-based fertilisers and to ammonium nitrate-based compound/composite fertilisers which fulfil the requirements of Annex III-2 to Regulation (EC) No 2003/2003 and in which the nitrogen content as a result of ammonium nitrate is—

- (a) more than 24.5% by weight, except for mixtures of straight ammonium nitrate based fertilisers with dolomite, limestone and/or calcium carbonate with a purity of at least 90%;
- (b) more than 15.75% by weight for mixtures of ammonium nitrate and ammonium sulphate;
- (c) more than 28%<sup>(a)</sup> by weight for mixtures of straight ammonium nitrate-based fertilisers with dolomite, limestone and/or calcium carbonate with a purity of at least 90%.

<sup>(15)</sup> Ammonium nitrate (350/2,500): technical grade

This applies to ammonium nitrate and mixtures of ammonium nitrate in which the nitrogen content as a result of the ammonium nitrate is—

- (a) between 24.5% and 28% by weight, and which contain not more than 0.4% combustible substances;
- (b) more than 28% by weight, and which contain not more than 0.2% combustible substances.

It also applies to aqueous ammonium nitrate solutions in which the concentration of ammonium nitrate is more than 80% by weight.

<sup>(16)</sup> Ammonium nitrate (10/50): 'off-specs' material and fertilisers not fulfilling the detonation test.

This applies to—

- (a) material rejected during the manufacturing process and to ammonium nitrate and mixtures of ammonium nitrate, straight ammonium nitrate-based fertilisers and ammonium nitrate-based compound/composite fertilisers referred to in Notes 14 and 15, that are being or have been returned from the final user to a manufacturer, temporary storage or reprocessing plant for reworking, recycling or treatment for safe use, because they no longer comply with the specifications of Notes 14 and 15;
- (b) fertilisers referred to in Note 13(a), and Note 14(a) to this Schedule which do not fulfil the requirements of Annex III-2 to Regulation (EC) No 2003/2003.

<sup>(17)</sup> Potassium nitrate (5,000/10,000)

This applies to those composite potassium-nitrate based fertilisers (in prilled/granular form) which have the same hazardous properties as pure potassium nitrate.

<sup>(18)</sup> Potassium nitrate (1,250/5,000)

This applies to those composite potassium-nitrate based fertilisers (in crystalline form) which have the same hazardous properties as pure potassium nitrate.

<sup>(19)</sup> Upgraded biogas

For the purpose of the implementation of these Regulations, upgraded biogas may be classified under entry 18 of Part 2 of Schedule 1 where it has been processed in accordance with applicable standards for purified and upgraded biogas ensuring a quality equivalent to that of natural gas, including the content of Methane, and which has a maximum of 1% Oxygen.

<sup>(20)</sup> Polychlorodibenzofurans and polychlorodibenzodioxins

The quantities of polychlorodibenzofurans and polychlorodibenzodioxins are calculated using the factors in Table 1—

**Table 1**

**WHO 2005 TEF**

2,3,7,8-TCDD	1	2,3,7,8-TCDF	0.1
1,2,3,7,8-PeCDD	1	2,3,4,7,8-PeCDF	0.3
		1,2,3,7,8-PeCDF	0.03

(a) 28% nitrogen content by weight as a result of ammonium nitrate corresponds to 80% ammonium nitrate.

1,2,3,4,7,8-HxCDD	0.1		
1,2,3,6,7,8-HxCDD	0.1	1,2,3,4,7,8-HxCDF	0.1
1,2,3,7,8,9-HxCDD	0.1	1,2,3,7,8,9-HxCDF	0.1
		1,2,3,6,7,8-HxCDF	0.1
1,2,3,4,6,7,8-HpCDD	0.01	2,3,4,6,7,8-HxCDF	0.1
OCDD	0.0003	1,2,3,4,6,7,8-HpCDF	0.01
		1,2,3,4,7,8,9-HpCDF	0.01
		OCDF	0.0003

(T = tetra, P = penta, Hx = hexa, Hp = hepta, O = octa)

Reference — Van den Berg et al: The 2005 World Health Organisation Re-evaluation of Human and Mammalian Toxic Equivalency Factors for Dioxins and Dioxin-like Compounds.

<sup>(21)</sup> In cases where this hazardous substance falls within category P5a Flammable liquids or P5b Flammable liquids, then for the purposes of these Regulations the lower controlled quantity applies.

## PART 3

### Substances used in an industrial chemical process

<i>Column 1 Hazardous Substances</i>	<i>Column 2 Controlled quantity</i>
Where it is reasonable to foresee that a substance falling within Part 1 or Part 2 may be generated during loss of control of an industrial chemical process (“HS”), any substance which is used in that process (“S”).	The amount of S which it is believed may generate (on its own or in combination with other substances used in the relevant industrial chemical process) an amount equal to or exceeding the controlled quantity of the HS in question.

#### NOTES TO PART 3

1. The expression “reasonable to foresee...may be generated during loss of control of an industrial chemical process” has the same meaning as in the Directive.

2. Where a hazardous substance falling within Part 1 or 2 also falls within Part 3, the classification with the lowest controlled quantity applies, subject to note 3 to the notes to Parts 1 and 2.

## SCHEDULE 2 Regulations 6(5), 7, 13(4) and 13(5)

### PRESCRIBED FORMS, NOTICES AND CERTIFICATES

#### Form 1

#### Posting of Notice of Application Certificate

#### The Planning (Hazardous Substances) Act 1990

**The Planning (Hazardous Substances) (England) Regulations 2015 (Regulation 6)**

**Certificate A**

I certify that:

I/The applicant\* posted the notice required by regulation 6(1)(b) of the above Regulations on the land which is the subject of the accompanying application.

The notice was left in position for not less than 7 days during the 21 day period preceding the application.

or

**Certificate B**

I certify that:

I have/The applicant has\* been unable to post the notice required by regulation 6(1)(b) of the above Regulations on the land which is the subject of the accompanying application because I have/the applicant has\* no right of access or other rights in respect of the land that would enable me/the applicant\* to do so.

I have/The applicant has\* taken the following steps to acquire those rights, but have/has\* been unsuccessful.

(Give description of steps taken) .....

or

**Certificate C**

I certify that:

I/The applicant\* posted the notice required by regulation 6(1)(b) of the above Regulations on the land which is the subject of the accompanying application.

It was, however, left in position for less than 7 days during the 21 day period preceding the application.

This happened because it was removed/obscured/defaced\* before 7 days had elapsed.

This was not my/the applicant's\* fault or intention.

I/The applicant\* took the following steps to protect and replace the notice:

(Give description of steps taken) .....

Signed.....

\*On behalf of.....

Date.....

\* delete where inappropriate

Form 2

**Certificates under Regulation 7(1)\* or 13(4)\*(a)**

**The Planning (Hazardous Substances) Act 1990**

**The Planning (Hazardous Substances) (England) Regulations 2015**

**Certificate A**

I certify that:

at the beginning of the period of 21 days ending with the date of the accompanying application/appeal\* nobody, except the applicant/appellant\*, was the owner **(b)** of any part of the land to which the application/appeal\* relates.

Signed.....

\*on behalf of.....

Date.....

**Certificate B**

I certify that:

I have/The applicant has/The appellant has\* given the required notice **(c)** to everyone else who, at the beginning of the period of 21 days ending with the date of the accompanying application/appeal, was the owner **(b)** of any part of the land to which the application/appeal\*relates, as listed below.

Owner's name

Address at which notice was served

Date on which notice was served

Signed.....

\*on behalf of.....

Date.....

**Certificate C**

I certify that:

I/The applicant/The appellant\* cannot issue a Certificate A or B in respect of the accompanying application/appeal\*.

I have/The applicant has/The appellant has\* given the required notice **(c)** to the persons specified below, being persons who at the beginning of the period of 21 days ending with the date of the application/appeal\*, were owners **(b)** of any part of the land to which the application/appeal

\*relates.

Owner's name

Address at which notice was served

Date on which notice was served

I have/The applicant has/The appellant has\* taken all reasonable steps open to me/him/her\* to find out the names and addresses of the remaining owners **(b)** of the land, or of a part of it, but have/has\* been unable to do so. These steps were as follows:—

**(d)** .....

Signed.....

\*On behalf of.....

Date.....

**Certificate D**

I certify that:

I/The applicant/The appellant\* cannot issue a Certificate A in respect of the accompanying application/appeal\*

I/The applicant/The appellant\* have/has\* taken all reasonable steps open to me/him/her\* to find out the names and addresses of everyone else who, at the beginning of the period of 21 days ending with the date of the application/appeal\*, was the owner (b) of any part of the land to which the application/appeal\* relates, but have/has\* been unable to do so. These steps were as follows:—

**(d)**.....

Signed.....

\*On behalf of.....

Date.....

\* delete where inappropriate

**(a)** These Certificates are for use both with applications and appeals for hazardous substances consent. References to either regulation 7(1) or 13(4) should therefore be deleted as appropriate. One of certificates A, B, C or D must be completed.

**(b)** "Owner" means a person having a freehold interest or a tenancy the unexpired term of which is not less than 7 years.

**(c)** Form 3 (for applications) or Form 4 (for appeals).

**(d)** Insert description of steps taken.

Form 3

**Notice of Application for Hazardous Substances Consent/ Continuation of  
Hazardous Substances Consent\***  
**The Planning (Hazardous Substances) Act 1990**

**The Planning (Hazardous Substances) (England) Regulations 2015 (Regulation 7)**

**To be served on an owner**

("owner" means a person having a freehold interest or a tenancy the unexpired term of which is not less than 7 years.)

I give notice that **(a)**.....

is applying to the **(b)**.....

for hazardous substances consent/the continuation of hazardous substances consent\*

**(c)**.....

at **(d)**.....

You may inspect a copy of the application at **(e)**.....within 21 days of the service of this notice.

If you wish to make representations about this application you should write to the

**(b)**..... at

**(f)**.....

within 21 days of the service of this notice.

Signed: .....

\*on behalf of.....

Date.....

\* delete where inappropriate

Insert:

**(a)** applicant's name

**(b)** name of Council or other body to whom the application is to be made

**(c)** brief details of the consent being sought

**(d)** address or location of the application site

**(e)** address at which the application may be inspected (the applicant is required to make the application available for inspection at a place within the locality of the application site)

**(f)** address of Council or other body to whom the application is to be made

Form 4

**Notice of Appeal**

**The Planning (Hazardous Substances) Act 1990**

**The Planning (Hazardous Substances) (England) Regulations 2015 (Regulation 13)**

To be served on an owner

(“owner” means a person having a freehold interest or a tenancy the unexpired term of which is not less than 7 years.)

I give notice that **(a)**.....  
having applied to the **(b)**..... for hazardous substances  
consent/the continuation of hazardous substances consent\* **(c)**.....

at **(d)**.....

is appealing to the [Secretary of State for Communities and Local Government]

—against the decision of the **(b)**.....

—on the failure of the **(b)**.....to give notice of a decision\*

If you wish to make representations about this appeal you should write to the Planning Inspectorate, Temple Quay House, Bristol BS1 8TY within 21 days of the date of service of this notice.

Signed: .....

\*on behalf of.....

Date.....

\* delete where inappropriate

Insert:

**(a)** appellant’s name

**(b)** name of Council or other body to whom the application was made

**(c)** brief details of the consent being sought

**(d)** address or location of the application site

ENFORCEMENT – MODIFICATION OF THE PRINCIPAL ACT

PART 1

Appeals against hazardous substances contravention notices

1. In section 174 of the principal Act (appeals against enforcement notice)—
  - (a) in subsection (1), for “an enforcement notice” substitute “a hazardous substances contravention notice”;
  - (b) for subsection (2) substitute—

“(2) An appeal may be brought on any of the following grounds-

    - (a) that, in respect of any contravention of hazardous substances control specified in the notice, hazardous substances consent ought to be granted for the quantity of the hazardous substance present on, over or under the land or, as the case may be, the condition concerned ought to be discharged;
    - (b) that the matters alleged to constitute a contravention of hazardous substances control have not occurred;
    - (c) that those matters (if they occurred) do not constitute a contravention of hazardous substances control;
    - (d) that copies of the hazardous substances contravention notice were not served as required by or under section 24(4) of the Planning (Hazardous Substances) Act 1990;
    - (e) that the steps required by the notice to be taken exceed what is necessary to remedy any contravention of hazardous substances control;
    - (f) that any period specified in the notice in accordance with section 24(5)(b) of that Act falls short of what should reasonably be allowed.”;
  - (c) omit subsections (2A), (2B) and (2C).
  - (d) in subsection (3)(a), for “enforcement notice” substitute “hazardous substances contravention notice”;
  - (e) for subsection (4) substitute—

“(4) A notice under subsection (3) shall be accompanied by a copy of the hazardous substances contravention notice, together with a statement—

    - (a) specifying the grounds on which the appeal is being made against the hazardous substances contravention notice; and
    - (b) setting out the appellant’s submissions in relation to each ground of appeal.”;
  - (f) in subsection (5), after “does not” and “failed” insert “in that statement” and omit “within the prescribed time” and “within that time”;
  - (g) in subsection (6), for “enforcement notice” substitute “hazardous substances contravention notice”.
2. In section 175 of the principal Act (appeals: supplementary provisions)—
  - (a) in subsections (4) and (5), for “enforcement notice” substitute “hazardous substances contravention notice”;
  - (b) in subsection (3), for “local planning authority” substitute “hazardous substances authority”;
  - (c) omit subsection (3A);

- (d) in subsection (6), for “any other provisions of this Act” substitute “section 25(1) of the Planning (Hazardous Substances) Act 1990”.
- 3.** In section 176 of the principal Act (general provisions relating to determination of appeals)—
- (a) in subsection (1)—
- (i) for “enforcement notice” in both places where it occurs, substitute “hazardous substances contravention notice”;
- (ii) for “local planning authority” substitute “hazardous substances authority”;
- (b) in subsection (3)—
- (i) in paragraph (a) omit “within the prescribed time”;
- (ii) for paragraph (b) substitute—
- “(b) may allow an appeal and quash the hazardous substances contravention notice if the hazardous substances authority fail to comply with regulation 16(2) of the Planning (Hazardous Substances) (England) Regulations 2015.”
- (c) in subsections (4) and (5), for “enforcement notice” substitute “hazardous substances contravention notice”.
- 4.** In section 177 of the principal Act (grant or modification of planning permission on appeal against enforcement notice)—
- (a) for subsection (1) substitute—
- “(1) On the determination of an appeal under section 174, the Secretary of State may—
- (a) grant hazardous substances consent for the presence of the hazardous substance on, over or under the land to which the hazardous substances contravention notice relates or on, over or under part of that land;
- (b) discharge any condition subject to which hazardous substances consent was granted.”;
- (b) omit subsections (1A) and (1B);
- (c) for subsection (2) substitute—
- “(2) In considering whether to grant hazardous substances consent under subsection (1), the Secretary of State shall have regard to the considerations specified in section 9(2) of the Planning (Hazardous Substances) Act 1990.”
- (d) in subsection (3), for “planning permission” in both places where it occurs substitute “hazardous substances consent” and for “Part III” substitute “the Planning (Hazardous Substances) Act 1990”;
- (e) in subsection (4) omit “or limitation” in both places where it occurs;
- (f) for subsection (5) substitute—
- “(5) where an appeal against a hazardous substances contravention notice is brought under section 174, the appellant shall be deemed to have made an application for hazardous substances consent in respect of the matters specified in the hazardous substances contravention notice as constituting a contravention of hazardous substances control.”
- (g) in subsection (5A), for “section 303” substitute “section 26A of the Planning (Hazardous Substances) Act 1990”;
- (h) in subsections (6) and (7), for “planning permission” substitute “hazardous substances consent”;
- (i) for subsection (8) substitute—
- “(8) For the purposes of section 28 of the Planning (Hazardous Substances) Act 1990 the Secretary of State’s decision shall be treated as having been given by him in dealing with an application for hazardous substances consent made to the hazardous substances authority.”

## PART 2

### Effect of hazardous substances contravention notices, etc.

**5.** In section 178 of the principal Act (execution and cost of works required by enforcement notices)—

- (a) for “an enforcement notice” in each place where it occurs substitute “a hazardous substances contravention notice”;
- (b) for “local planning authority” in each place where it occurs substitute “hazardous substances authority”;
- (c) in subsection (2) for “breach of planning control” in both places where it occurs substitute “contravention of hazardous substances control”;
- (d) in subsection (4) for “the enforcement notice” substitute “the hazardous substances contravention notice”;
- (e) after subsection (6) insert—

“(7) Where different periods are specified for different steps under section 24(5)(b) of the Planning (Hazardous Substances) Act 1990 in relation to a hazardous substances contravention notice, references in this section and in section 179 to the period for compliance with a hazardous substances contravention notice, in relation to any step, are to the period at the end of which the step is required to have been taken.”

**6.** In section 179 (offence where enforcement notice not complied with)—

- (a) for subsection (1) substitute—

“(1) Where, at any time after the end of the period for compliance with a hazardous substances contravention notice, any steps required by the notice to be taken have not been taken, the person who is then the owner of the land and any person other than the owner who is in control of the land is in breach of the notice.”
- (b) in subsection (2) for “the owner of the land” substitute “a person” and for “an enforcement notice” substitute “a hazardous substances contravention notice”;
- (c) omit subsections (4) and (5);
- (d) in subsection (6) omit “or (5)”;
- (e) in subsection (7)(a) for “enforcement notice” substitute “hazardous substance contravention notice”.

**7.** In section 180 (effect of planning permission etc. on enforcement or breach of condition notice)—

- (a) for subsection (1) substitute—

“(1) Where, after the service of a copy of a hazardous substances contravention notice, hazardous substances consent is granted for the presence of a hazardous substance on, over or under the land to which the notice relates, the notice shall cease to have effect so far as inconsistent with that consent.”
- (b) omit subsection (2);
- (c) in subsection (3), for “enforcement notice or breach of conditions notice” substitute “a hazardous substances contravention notice”.

**8.** For section 181 (enforcement notice to have effect against subsequent development) substitute—

“(1) Compliance with a hazardous substances contravention notice shall not discharge that notice.

(2) Without prejudice to subsection (1), where a provision of a hazardous substances contravention notice requires a hazardous substance to be removed from the land to which the notice relates, the presence on, over or under that land of a quantity of that substance

equal to or exceeding its controlled quantity at any time after the substance has been removed in compliance with the hazardous substances contravention notice shall be in contravention of that notice.

(3) Without prejudice to subsection (1), where a provision of a hazardous substances contravention notice requires the quantity of a hazardous substance on, over or under the land to which the notice relates to be reduced below a specified quantity (being greater than the controlled quantity), the presence on, over or under that land of a quantity of that substance equal to or in excess of the specified quantity at any time after the quantity of that substance has been reduced below the specified quantity in compliance with the hazardous substances contravention notice, shall be in contravention of that notice.

(4) Without prejudice to subsection (1), where a provision of a hazardous substances contravention notice requires steps to be taken to remedy a failure to comply with a condition subject to which a hazardous substances consent was granted, after those steps have been taken no further steps shall be taken which would constitute a breach of that condition, and the taking of such further steps shall be in contravention of that notice.

(5) Sections 178 and 179 shall apply to the contravention of a hazardous substances contravention notice to which this section applies as if the period for compliance with the notice had expired on the date the contravention took place, but the hazardous substances authority shall not enter the land under section 178(1) without, at least 28 days before their entry, serving on the owner or occupier of the land a notice of their intention to do so.”.

## PART 3

### Registers

9. In section 188 of the principal Act (register of enforcement and stop notices)—

(a) for subsections (1) and (2) substitute—

“(1) Every hazardous substances authority shall keep an enforcement register containing the following information in respect of each hazardous substances contravention notice issued by them—

- (a) the address of the land to which the notice relates;
- (b) the date of service of copies of the notice;
- (c) a statement of the alleged contravention of hazardous substances control, the steps required by the notice to remedy the contravention, and the period within which such steps are to be taken;
- (d) the date specified in the notice as the date on which it is to take effect;
- (e) the date and effect of any variation of the notice;
- (f) the date of any appeal to the Secretary of State against the notice and the date of the final determination of the appeal.

(1A) The entry relating to the hazardous substances contravention notice and everything relating to any such notice shall be removed from the register if the notice is quashed by the Secretary of State or withdrawn.

(1B) The register shall include an index to enable any person to trace an entry in the register.

(1C) Every entry in the register shall be made within 14 days of the relevant information being available to the hazardous substances authority.

(1D) The register shall be kept at the principal office of the hazardous substances authority.

(2) The register shall be kept at the principal office of the hazardous substances authority.”.

(b) Omit paragraph (4).

## PART 4

### Validity

**10.** In section 285 of the principal Act (validity of enforcement notices and similar notices)—

- (a) in subsection (1), for “an enforcement notice” substitute “a hazardous substances contravention notice”;
- (b) in subsection (2), for “enforcement notice” in each place where it occurs substitute “hazardous substances contravention notice”;
- (c) omit subsections (3) and (4).

**11.** In section 289 of the principal Act (appeals to the High Court relating to enforcement notices etc.)—

- (a) in subsections (1), (4A) and (5A) for “an enforcement notice” in each place where it occurs substitute “a hazardous substances contravention notice” and in subsections (1) and (4A) for “local planning authority” in each place where it occurs substitute “hazardous substances authority”;
- (b) omit subsections (2) and (4B).

## PART 5

### Sections of the principal Act as modified

**“174.—**(1) A person having an interest in the land to which a hazardous substances contravention notice relates or a relevant occupier may appeal to the Secretary of State against the notice, whether or not a copy of it has been served on him.

(2) An appeal may be brought on any of the following grounds—

- (a) that, in respect of any contravention of hazardous substances control specified in the notice, hazardous substances consent ought to be granted for the quantity of the hazardous substance present on, over or under the land or, as the case may be, the condition concerned ought to be discharged;
- (b) that the matters alleged to constitute a contravention of hazardous substances control have not occurred;
- (c) that these matters (if they occurred) do not constitute a contravention of hazardous substances control;
- (d) that copies of the hazardous substances contravention notice were not served as required by or under section 24(4) of the Planning (Hazardous Substances) Act 1990;
- (e) that the steps required by the notice to be taken exceed what is necessary to remedy any contravention of hazardous substances control;
- (f) that any period specified in the notice in accordance with section 24(5)(b) of that Act falls short of what should reasonably be allowed.

(3) An appeal under this section shall be made—

- (a) by giving written notice of the appeal to the Secretary of State before the date specified in the hazardous substances contravention notice as the date on which it is to take effect; or
- (b) by sending such notice to him in a properly addressed and pre-paid letter posted to him at such time that, in the ordinary course of post, it would be delivered to him before that date; or
- (c) by sending such notice to him using electronic communications at such time that, in the ordinary course of transmission, it would be delivered to him before that date.

(4) A notice under subsection (3) shall be accompanied by a copy of the hazardous substances contravention notice, together with a statement—

- (a) specifying the grounds on which the appeal is being made against the hazardous substances contravention notice; and
- (b) setting out the appellant's submissions in relation to each ground of appeal.

(5) If, where more than one ground is specified in that statement, the appellant does not in that statement give information required under subsection (4)(b) in relation to each of those grounds the Secretary of State may determine the appeal without considering any ground as to which the appellant has failed in that statement to give such information.

(6) In this section "relevant occupier" means a person who—

- (a) on the date on which the hazardous substances contravention notice is issued occupies the land to which the notice relates by virtue of a licence; and
- (b) continues so to occupy the land when the appeal is brought.

### **175.**

(1) The Secretary of State may by regulations prescribe the procedure which is to be followed on appeals under section 174 and, in particular, but without prejudice to the generality of this subsection, may—

- (a) require the local planning authority to submit, within such time as may be prescribed, a statement indicating the submissions which they propose to put forward on the appeal;
- (b) specify the matters to be included in such a statement;
- (c) require the authority or the appellant to give such notice of such an appeal as may be prescribed;
- (d) require the authority to send to the Secretary of State, within such period from the date of the bringing of the appeal as may be prescribed, a copy of the hazardous substances contravention notice and a list of the persons served with copies of it.

(2) The notice to be prescribed under subsection (1)(c) shall be such notice as in the opinion of the Secretary of State is likely to bring the appeal to the attention of persons in the locality in which the land to which the hazardous substances contravention notice relates is situated.

(3) Subject to section 176(4), the Secretary of State shall, if either the appellant or the hazardous substances authority so desire, give each of them an opportunity of appearing before and being heard by a person appointed by the Secretary of State for the purpose.

(4) Where an appeal is brought under section 174 the hazardous substances contravention notice shall subject to any order under section 289(4A) be of no effect pending the final determination or the withdrawal of the appeal.

(5) Where any person has appealed to the Secretary of State against a hazardous substances contravention notice, no person shall be entitled, in any other proceedings instituted after the making of the appeal, to claim that the notice was not duly served on the person who appealed.

(6) Schedule 6 applies to appeals under section 174, including appeals under that section as applied by regulations under section 25(1) of the Planning (Hazardous Substances) Act 1990.

### **176.**

(1) On an appeal under section 174 the Secretary of State may-

- (a) correct any defect, error or misdescription in the hazardous substances contravention notice; or
- (b) vary the terms of the hazardous substances contravention notice,

if he is satisfied that the correction or variation will not cause injustice to the appellant or the hazardous substances authority.

(2) Where the Secretary of State determines to allow the appeal, he may quash the notice.

(2A) The Secretary of State shall give any directions necessary to give effect to his determination on the appeal.

(3) The Secretary of State—

- (a) may dismiss an appeal if the appellant fails to comply with section 174(4); and
- (b) may allow an appeal and quash the hazardous substances contravention notice if the hazardous substances authority fail to comply with regulation 16(2) of the Planning (Hazardous Substances) (England) Regulations 2015.

(4) If the Secretary of State proposes to dismiss an appeal under paragraph (a) of subsection (3) or to allow an appeal and quash the hazardous substances contravention notice under paragraph (b) of that subsection, he need not comply with section 175(3).

(5) Where it would otherwise be a ground for determining an appeal under section 174 in favour of the appellant that a person required to be served with a copy of the hazardous substances contravention notice was not served, the Secretary of State may disregard that fact if neither the appellant nor that person has been substantially prejudiced by the failure to serve him.

**177.**

(1) On the determination of an appeal under section 174, the Secretary of State may—

- (a) grant hazardous substances consent for the presence of the hazardous substance on, over or under the land to which the hazardous substances contravention notice relates or on, over or under part of that land;
- (b) discharge any condition subject to which hazardous substances consent was granted.

(2) In considering whether to grant hazardous substances consent under subsection (1), the Secretary of State shall have regard to the considerations specified in section 9(2) of the Planning (Hazardous Substances) Act 1990.

(3) The hazardous substances consent that may be granted under subsection (1) is any hazardous substances consent that might be granted on an application under the Planning (Hazardous Substances) Act 1990.

(4) Where under subsection (1) the Secretary of State discharges a condition he may substitute another condition for it, whether more or less onerous.

(5) Where an appeal against a hazardous substances contravention notice is brought under section 174, the appellant shall be deemed to have made an application for hazardous substances consent in respect of the matters specified in the hazardous substances contravention notice as constituting a contravention of hazardous substances control.

(5A) Where—

- (a) the statement under subsection (4) of section 174 specifies the ground mentioned in subsection (2)(a) of that section;
- (b) any fee is payable under regulations made by virtue of section 26A of the Planning (Hazardous Substances) Act 1990 in respect of the application deemed to be made by virtue of the appeal; and
- (c) the Secretary of State gives notice in writing to the appellant specifying the period within which the fee must be paid,

then, if that fee is not paid within that period, the appeal, so far as brought on that ground, and the application shall lapse at the end of that period.

(6) Any hazardous substances consent granted under subsection (1) on an appeal shall be treated as granted on the application deemed to have been made by the appellant.

(7) In relation to a grant of hazardous substances consent or a determination under subsection (1) the Secretary of State's decision shall be final.

(8) For the purposes of section 28 of the Planning (Hazardous Substances) Act 1990 the Secretary of State's decision shall be treated as having been given by him in dealing with an application for hazardous substances consent made to the hazardous substances authority.

**178.**

(1) Where any steps required by a hazardous substances contravention notice to be taken are not taken within the period for compliance with the notice, the hazardous substances authority may—

- (a) enter the land and take the steps; and
- (b) recover from the person who is then the owner of the land any expenses reasonably incurred by them in doing so.

(2) Where a copy of a hazardous substances contravention notice has been served in respect of any contravention of hazardous substances control—

- (a) any expenses incurred by the owner or occupier of any land for the purpose of complying with the notice, and
- (b) any sums paid by the owner of any land under subsection (1) in respect of expenses incurred by the hazardous substances authority in taking steps required by such a notice to be taken,

shall be deemed to be incurred or paid for the use and at the request of the person by whom the contravention of hazardous substances control was committed.

(3) Regulations made under this Act may provide that—

- (a) section 276 of the Public Health Act 1936, (power of local authorities to sell materials removed in executing works under that Act subject to accounting for the proceeds of sale);
- (b) section 289 of that Act (power to require the occupier of any premises to permit works to be executed by the owner of the premises); and
- (c) section 294 of that Act (limit on liability of persons holding premises as agents or trustees in respect of the expenses recoverable under that Act),

shall apply, subject to such adaptations and modifications as may be specified in the regulations, in relation to any steps required to be taken by a hazardous substances contravention notice.

(4) Regulations under subsection (3) applying section 289 of the Public Health Act 1936 may include adaptations and modifications for the purpose of giving the owner of land to which a hazardous substances contravention notice relates the right, as against all other persons interested in the land, to comply with the requirements of the hazardous substances contravention notice.

(5) Regulations under subsection (3) may also provide for the charging on the land of any expenses recoverable by a hazardous substances authority under subsection (1).

(6) Any person who wilfully obstructs a person acting in the exercise of powers under subsection (1) shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(7) Where different periods are specified for different steps under section 24(5)(b) of the Planning (Hazardous Substances) Act 1990 in relation to a hazardous substances contravention notice, references in this section and in section 179 to the period for compliance with a hazardous substances contravention notice, in relation to any step, are to the period at the end of which the step is required to have been taken.

**179.**

(1) Where, at any time after the end of the period for compliance with a hazardous substances contravention notice, any steps required by the notice to be taken have not been

taken, the person who is then the owner of the land and any person other than the owner who is in control of the land is in breach of the notice.

(2) Where a person is in breach of a hazardous substances contravention notice he shall be guilty of an offence.

(3) In proceedings against any person for an offence under subsection (2), it shall be a defence for him to show that he did everything he could be expected to do to secure compliance with the notice.

...

(6) An offence under subsection (2) may be charged by reference to any day or longer period of time and a person may be convicted of a second or subsequent offence under the subsection in question by reference to any period of time following the preceding conviction for such an offence.

(7) Where—

- (a) a person charged with an offence under this section has not been served with a copy of the hazardous substances contravention notice; and
- (b) the notice is not contained in the appropriate register kept under section 188,

it shall be a defence for him to show that he was not aware of the existence of the notice.

(8) A person guilty of an offence under this section shall be liable—

- (a) on summary conviction, to a fine not exceeding £20,000; and
- (b) on conviction on indictment, to a fine.

(9) In determining the amount of any fine to be imposed on a person convicted of an offence under this section, the court shall in particular have regard to any financial benefit which has accrued or appears likely to accrue to him in consequence of the offence.

#### **180.**

(1) Where, after the service of a copy of a hazardous substances contravention notice, hazardous substances consent is granted for the presence of a hazardous substance on, over or under the land to which the notice relates, the notice shall cease to have effect so far as inconsistent with that consent.

...

(3) The fact that a hazardous substances contravention notice has wholly or partly ceased to have effect by virtue of this section shall not affect the liability of any person for an offence in respect of a previous failure to comply, or secure compliance, with the notice.

#### **181.**

(1) Compliance with a hazardous substances contravention notice shall not discharge that notice.

(2) Without prejudice to subsection (1), where a provision of a hazardous substances contravention notice requires a hazardous substance to be removed from the land to which the notice relates, the presence on, over or under that land of a quantity of that substance equal to or exceeding its controlled quantity at any time after the substance has been removed in compliance with the hazardous substances contravention notice shall be in contravention of that notice.

(3) Without prejudice to subsection (1), where a provision of a hazardous substances contravention notice requires the quantity of a hazardous substance on, over or under the land to which the notice relates to be reduced below a specified quantity (being greater than the controlled quantity), the presence on, over or under that land of a quantity of that substance equal to or in excess of the specified quantity at any time after the quantity of that substance has been reduced below the specified quantity in compliance with the hazardous substances contravention notice, shall be in contravention of that notice.

(4) Without prejudice to subsection (1), where a provision of a hazardous substances contravention notice requires steps to be taken to remedy a failure to comply with a

condition subject to which a hazardous substances consent was granted, after those steps have been taken no further steps shall be taken which would constitute a breach of that condition, and the taking of such further steps shall be in contravention of that notice.

(5) Sections 178 and 179 shall apply to the contravention of a hazardous substances contravention notice to which this section applies as if the period for compliance with the notice had expired on the date the contravention took place, but the hazardous substances authority shall not enter the land under section 178(1) without, at least 28 days before their entry, serving on the owner or occupier of the land a notice of their intention to do so.

**188.**

(1) Every hazardous substances authority shall keep an enforcement register containing the following information in respect of each hazardous substances contravention notice issued by them-

- (a) the address of the land to which the notice relates;
- (b) the date of service of copies of the notice;
- (c) a statement of the alleged contravention of hazardous substances control, the steps required by the notice to remedy the contravention, and the period within which such steps are to be taken;
- (d) the date specified in the notice as the date on which it is to take effect;
- (e) the date and effect of any variation of the notice;
- (f) the date of any appeal to the Secretary of State against the notice and the date of the final determination of the appeal.

(1A) The entry relating to the hazardous substances contravention notice and everything relating to any such notice shall be removed from the register if the notice is quashed by the Secretary of State or withdrawn.

(1B) The register shall include an index to enable any person to trace an entry in the register.

(1C) Every entry in the register shall be made within 14 days of the relevant information being available to the hazardous substances authority.

(2) The register shall be kept at the principal office of the hazardous substances authority.

(3) Every register kept under this section shall be available for inspection by the public at all reasonable hours.

**285.**

(1) The validity of a hazardous substances contravention notice shall not, except by way of an appeal under Part VII, be questioned in any proceedings whatsoever on any of the grounds on which such an appeal may be brought.

(2) Subsection (1) shall not apply to proceedings brought under section 179 against a person who—

- (a) has held an interest in the land since before the hazardous substances contravention notice was issued under that Part;
- (b) did not have a copy of the hazardous substances contravention served on him under that Part; and
- (c) satisfies the court—
  - (i) that he did not know and could not reasonably have been expected to know that the hazardous substances contravention notice had been issued; and
  - (ii) that his interests have been substantially prejudiced by the failure to serve him with a copy of it.

**289.**

(1) Where the Secretary of State gives a decision in proceedings on an appeal under Part VII against a hazardous substances contravention notice the appellant or the hazardous substances authority or any other person having an interest in the land to which the notice relates may, according as rules of court may provide, either appeal to the High Court against the decision on a point of law or require the Secretary of State to state and sign a case for the opinion of the High Court.

...

(3) At any stage of the proceedings on any such appeal as is mentioned in subsection (1), the Secretary of State may state any question of law arising in the course of the proceedings in the form of a special case for the decision of the High Court.

(4) A decision of the High Court on a case stated by virtue of subsection (3) shall be deemed to be a judgment of the court within the meaning of section 16 of the Senior Courts Act 1981 (jurisdiction of the Court of Appeal to hear and determine appeals from any judgment of the High Court).

(4A) In proceedings brought by virtue of this section in respect of a hazardous substances contravention notice, the High Court or, as the case may be, the Court of Appeal may, on such terms if any as the Court thinks fit (which may include terms requiring the hazardous substances authority to give an undertaking as to damages or any other matter), order that the notice shall have effect, or have effect to such extent as may be specified in the order, pending the final determination of those proceedings and any re-hearing and determination by the Secretary of State.

(5) In relation to any proceedings in the High Court or the Court of Appeal brought by virtue of this section the power to make rules of court shall include power to make rules-

- (a) prescribing the powers of the High Court or the Court of Appeal with respect to the remitting of the matter with the opinion or direction of the court for re-hearing and determination by the Secretary of State; and
- (b) providing for the Secretary of State, either generally or in such circumstances as may be prescribed by the rules, to be treated as a party to any such proceedings and to be entitled to appear and to be heard accordingly.

(5A) Rules of court may also provide for the High Court or, as the case may be, the Court of Appeal to give directions as to the exercise, until such proceedings in respect of a hazardous substances contravention notice are finally concluded and any re-hearing and determination by the Secretary of State has taken place, of any other powers in respect of the matters to which such a notice relates.

(6) No proceedings in the High Court shall be brought by virtue of this section except with the leave of that Court and no appeal to the Court of Appeal shall be so brought except with the leave of the Court of Appeal or of the High Court.

(7) In this section "decision" includes a direction or order, and references to the giving of a decision shall be construed accordingly.

## SCHEDULE 4

Regulation 32

### Amendments to legislation

#### **Amendment of The Town and Country Planning (London Spatial Development Strategy) Regulations 2000**

**12.—**(1) The Town and Country Planning (London Spatial Development Strategy) Regulations 2000(a) are amended as follows.

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(a) S.I. 2000/1491.

- (2) In regulation 6 (regard to be had to certain matters and statement of regard)—
- (a) In paragraph (1), for paragraphs (b) and (c) substitute—
- “(b) the objectives of preventing major accidents and limiting the consequences of such accidents for human health and the environment;
  - (c) the need, in the long term—
    - (i) to maintain appropriate safety distances between establishments and residential areas, buildings and areas of public use, recreational areas, and, as far as possible, major transport routes;
    - (ii) to protect areas of particular natural sensitivity or interest in the vicinity of establishments, where appropriate through appropriate safety distances or other relevant measures;
    - (iii) in the case of existing establishments, to take additional technical measures in accordance with Article 5 of Directive 2012/18/EU so as not to increase the risks to human health and the environment.”
- (b) In paragraph (2), for “Council Directive 96/ 82/ EC” substitute “Directive 2012/18/EU”.

### **Amendment of the Town and Country Planning (Mayor of London) Order 2008**

**13.**—(1) The Town and Country Planning (Mayor of London) Order 2008<sup>(a)</sup> is amended as follows.

(2) In article 6 (Mayor’s power to direct refusal of a PSI application) for paragraphs (2)(h) and (2)(i), substitute—

- “(h) the objectives of preventing major accidents and limiting the consequences of such accidents for human health and the environment;
- (i) the need, in the long term—
  - (i) to maintain appropriate safety distances between establishments and residential areas, buildings and areas of public use, recreational areas, and, as far as possible, major transport routes;
  - (ii) to protect areas of particular natural sensitivity or interest in the vicinity of establishments, where appropriate through appropriate safety distances or other relevant measures; and
  - (iii) in the case of existing establishments, to take additional technical measures in accordance with Article 5 of Directive 2012/18/EU so as not to increase the risks to human health and the environment.”

(3) In paragraph (3), for “Council Directive 96/ 82/ EC” substitute “Directive 2012/18/EU”.

### **Amendment of The Town and Country Planning (Local Planning) (England) Regulations 2012<sup>(b)</sup>**

**14.**—(1) The Town and Country Planning (Local Planning) (England) Regulations 2012 are amended as follows.

(2) In regulation 10 (Local plans and supplementary planning documents: additional matters to which regard is to be had)—

- (a) for paragraph (1)(b) substitute—
- “(b) the objectives of preventing major accidents and limiting the consequences of such accidents for human health and the environment by pursuing those objectives through the controls described in Article 13 of Council Directive 2012/18/EU;”
- (b) for paragraph (c) substitute—

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(a) S.I. 2008/580.  
(b) S.I. 2012/767.

“(c) the need, in the long term—

- (i) to maintain appropriate safety distances between establishments and residential areas, buildings and areas of public use, recreational areas, and, as far as possible, major transport routes;
- (ii) to protect areas of particular natural sensitivity or interest in the vicinity of establishments, where appropriate through appropriate safety distances or other relevant measures;
- (ii) in the case of existing establishments, to take additional technical measures in accordance with Article 5 of Directive 2012/18/EU so as not to increase the risks to human health and the environment.”

(c) in paragraph (2), for “Council Directive 96/82/EC (as amended by Council Directive 2003/105/EC)” substitute “Directive 2012/18/EU”.

### **Amendment of The Town and Country Planning (Development Management Procedure) (England) Order 2010**

**15.**—(1) The Town and Country Planning (Development Management Procedure) (England) Order 2010(a) is amended as follows.

(2) In the table in Schedule 5 (consultations before the grant of permission), in paragraph (zc)—

(a) for the words in column 2 substitute—

“Development falling within any of the following descriptions:

- (i) development involving the siting of new establishments;
- (ii) development consisting of modifications to existing establishments covered by Article 11 of Directive 2012/18/EU; or
- (iii) new developments including transport links, locations frequented by the public and residential areas in the vicinity of existing establishments, where the siting or development may be the source of or increase the risk or consequences of a major accident.”

(b) in the second column—

- (i) for words “the Health and Safety Executive and the Environment Agency”, substitute “the COMAH competent authority”; and
- (ii) add at the end “, and in relation to development falling within paragraph (iii), any person who is, according to the register held by the hazardous substances authority under regulation 20 of the Planning (Hazardous Substances) (England) Regulations 2015, the person who is in control of the land on which any existing establishment in question is located”.

(c) In Schedule 5 in paragraph 1 (interpretation of table), for paragraph (l) substitute—

“(l) in paragraph (zc)—

- (i) expressions appearing both in that paragraph and in Directive 2012/18/EU have the same meaning as in that Directive; and
- (ii) “COMAH competent authority” means—
  - (aa) in relation to a nuclear establishment, the Office of Nuclear Regulation and the Environment Agency acting jointly;
  - (bb) otherwise, the Health and Safety Executive and the Environment Agency acting jointly.”.

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(a) S.I. 2010/2184.

## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations consolidate several sets of Regulations made under the Planning (Hazardous Substances) Act 1990 (“the Act”). They also implement the land-use planning aspects of Directive 2012/18/EU on the control of major-accident hazards involving dangerous substances (O.J. No. L 197, 24.7.2012, p.1) (the “Seveso III Directive”). That Directive amends and repeals Council Directive 96/82/EC. These Regulations apply to England only.

These Regulations set out—

(1) in Part 2 and Schedule 1, the substances which are hazardous substances for the purposes of the Act, the controlled quantities of those substances, and exemptions from the need for hazardous substances consent;

(2) in Part 3 and Schedule 2, the procedure to be followed for an application for hazardous substances consent;

(3) in Part 4 and Schedule 3, the enforcement of hazardous substances control procedure;

(4) in Part 5, the information to be held in a consents register;

(5) in Part 6, the fees required in connection with an application for hazardous substances consent;

(6) in Part 7, how hazardous substances control applies to hazardous substances authorities;

(7) in Part 8, the obligation to take certain matters in the Seveso III Directive into account in land-use planning policies and other relevant policies;

(8) in Part 9, public consultation and participation obligations in relation to certain plans, programmes and projects; and

(9) in Part 10, revocations, amendments, savings, transitional provisions and review obligations.

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# Annex B: Glossary of terms

<b>Aarhus convention</b>	<p>The United Nations Economic Commission for Europe (UNECE) Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters – available at <a href="http://www.unece.org/env/pp/treatytext.html">http://www.unece.org/env/pp/treatytext.html</a>. The convention was adopted on 25 June 1998 in the Danish city of Aarhus (Århus) and establishes a number of rights of the public (individuals and their associations) with regard to the environment. For further information see <a href="http://ec.europa.eu/environment/aarhus/">http://ec.europa.eu/environment/aarhus/</a></p>
<b>Control of major accident hazards regime</b>	<p>The control of major accident hazards regime, known as COMAH. This regime implements all but the land-use planning aspects of the Seveso directive. The majority of the current Seveso II directive is implemented in Great Britain by the Control of Major Accident Hazards (COMAH) Regulations 1999 (made under the Health and Safety at Work etc Act 1974 and the European Communities Act 1972). The Health and Safety Executive consulted on draft Control of Major Accident Hazards 2015 regulations in May 2014 – see <a href="http://www.hse.gov.uk/consult/condocs/cd266.htm">http://www.hse.gov.uk/consult/condocs/cd266.htm</a></p>
<b>Control of major accident hazards competent authority</b>	<p>The control of major accident hazards regime, is enforced by the Health and Safety Executive and the relevant environment agencies – in England the Environment Agency, in Scotland the Scottish Environment Protection Agency, and in Wales Natural Resources Wales - working together as the control of major accident hazards competent authority (known as the COMAH competent authority). The creation of the Office for Nuclear Regulation on 1 April 2014, via the Energy Act 2013 set up a further competent authority under the Control of Major Accident Hazards Regulations 1999 between the Office for Nuclear Regulation and the environment agencies to cover licensed nuclear sites.</p>
<b>Consultation distances</b>	<p>Before deciding on whether to grant planning permission for certain developments near hazardous establishments, local planning authorities are required to consult the Health and Safety Executive, which will advise on the implications for public safety. This consultation is required for certain developments and in areas ('consultation distances') which the Executive notify to local planning authorities. These 'consultation distances' are based on the existence of a hazardous substances consent, and vary depending on the details of the consent (for example the substances</p>

permitted, and how or where they are stored). Permitted development rights, where these might increase the risk or consequences of a major accident, are excluded in these areas. For major infrastructure planning proposals, consultation distances do not apply. However, the Health and Safety Executive are consulted in all cases, and work with the control of major accident hazards competent authority to provide relevant advice.

**Hazardous establishments**

In this consultation document, 'hazardous establishments' refers to those establishments which would require hazardous substances consent. In summary, that is those establishments where hazardous substances (see below) are present, in quantities above that where consent would be required.

**Hazardous substances**

Certain chemicals and substances, such as chlorine or hydrogen, can be dangerous to human health or the environment, particularly in the event of an accident where normal controls on substances may be lost. Legislation provides for additional controls on such substances. For the purposes of land-use planning, hazardous substances are defined in the Planning (Hazardous Substances) Regulations 1992, as amended<sup>1</sup>. The Seveso directive also defines hazardous substances to which it applies.

**Hazardous substances authority**

Hazardous substances authorities are defined at s.1 and 3 of the Planning (Hazardous Substances) Act 1990. These provisions are designed to ensure that the hazardous substances authority will usually be the same council or other body that would act as the local planning authority in dealing with any associated application for planning permission. In England the hazardous substances authority is: in Greater London, the London Boroughs; in Metropolitan areas, the metropolitan district council; in non-metropolitan areas, the district council except where the land is used for mineral working or for waste disposal, in which case the county council is the hazardous substances authority; in national parks and the Norfolk and Suffolk Broads the national park authority or broads authority.

**Hazardous substances consent regime**

The hazardous substances consent regime, or the 'consent regime' refers to the regime used to grant consent for certain hazardous substances to be present, under the Planning (Hazardous Substances) Act 1990.

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<sup>1</sup> The current list of controlled hazardous substances is available on the planning practice guidance website at <http://planningguidance.planningportal.gov.uk/blog/guidance/hazardous-substances/when-is-consent-needed-for-the-storage-or-use-of-hazardous-substances/list-of-hazardous-substances-and-controlled-quantities/>

**Town and country planning system**

In this consultation document, reference to the ‘town and country planning system’ or the ‘planning system’ refers to the major infrastructure planning regime<sup>2</sup>, local and neighbourhood plans, and the granting of planning permission for development.

**Transposition**

EU directives are a form of EU legislation which contains deadlines for the implementation ("transposition") of the rights and obligations in the directive in the member states. Implementing the Seveso III directive, including transposition into planning law, is intended to ensure the land-use planning requirements of the directive are delivered in England. The UK government has published guidance on how to transpose EU directives into UK law effectively, in accordance with the Guiding Principles for EU Legislation at <https://www.gov.uk/government/publications/implementing-eu-directives-into-uk-law>

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<sup>2</sup> See <http://infrastructure.planningportal.gov.uk/>

# About this consultation

This consultation document and consultation process have been planned to adhere to the Consultation Principles issued by the Cabinet Office.

Representative groups are asked to give a summary of the people and organisations they represent, and where relevant who else they have consulted in reaching their conclusions when they respond.

Information provided in response to this consultation, including personal information, may be published or disclosed in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000, the Data Protection Act 1998 and the Environmental Information Regulations 2004).

If you want the information that you provide to be treated as confidential, please be aware that, under the Freedom of Information Act 2001, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence. In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the department.

The Department for Communities and Local Government will process your personal data in accordance with Data Protection Act and in the majority of circumstances this will mean that your personal data will not be disclosed to third parties.

Individual responses will not be acknowledged unless specifically requested.

Your opinions are valuable to us. Thank you for taking the time to read this document and respond.

Are you satisfied that this consultation has followed the Consultation Principles? If not or you have any other observations about how we can improve the process please contact:

DCLG Consultation Co-ordinator.

Fry Building 4/SW

2 Marsham Street

London SW1P 4DF

or by e-mail to: [consultationcoordinator@communities.gsi.gov.uk](mailto:consultationcoordinator@communities.gsi.gov.uk)